S. Hrg. 99-203

S. 1349—S. 1398

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1349

TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED IN DOCKET 363 TO THE MDEWAKANTON AND WAHPEKUTE EASTERN OR MISSISSIPPI SIOUX BEFORE THE UNITED STATES COURT OF CLAIMS AND CLAIMS COURT

AND

S. 1398

TO AMEND TITLE XI OF THE EDUCATION AMENDMENTS OF 1978, RELATING TO INDIAN EDUCATION PROGRAMS

JULY 17, 1985
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
52-268 O WASHINGTON : 1985

S411-13

52-268 O - 85 - 1

SELECT COMMITTEE ON INDIAN AFFAIRS

MARK ANDREWS, North Dakota, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
SLADE GORTON, Washington	DANIEL K. INOUYE, Hawaii
FRANK H. MURKOWSKI, Alaska	DENNIS DECONCINI, Arizona
JAMES ABDNOR, South Dakota	QUENTIN N. BURDICK, North Dakota

PETER S. TAYLOR, *Staff Director*

CONTENTS

Page
S. 1349, text of 3
S. 1398, text of 12

WITNESSES

Allen, Samuel H., treasurer/secretary, Flandreau Santee Sioux Tribe, Flandreau, SD 29
Bordeaux, Roger, executive director, Association of Contract Tribal Schools 62
  Prepared statement 63
Campbell, Joseph, vice chairman, Prairie Island Community Council, Welch, MN 29
  Resolution of the council in support of S. 1349 30
Duus, Vern, program director, Navajo Area School Board Association, Window Rock, AZ 73
  Prepared statement 75
Eberhard, Eric, deputy director, Navajo Nation Washington office, Washington, DC, accompanied by Alice Luna, staff assistant 107
  Letter, dated July 18, 1985, responding to a request of Mr. Mahsetky for additional information regarding school attendance boundaries 121
  Prepared statement 109
Elbert, Hazel, Acting Director of Indian Services, Bureau of Indian Affairs, Department of the Interior 24
  Prepared statement 25
Fritz, John, Deputy Assistant Director for Indian Affairs, Department of the Interior 39
  Prepared statement with attachments 40
Hoffman, Bruce, representing the Association of Navajo Community Controlled School Boards, Inc., Rock Point, AZ 83
  Prepared statement 85
Kitto, Richard L., chairman, Santee Sioux Tribe of Nebraska 37
  Prepared statement 37
Prescott, Michael, chairman, Lower Sioux Indian Community, Morton, MN 33
  Prepared statement 34
Taylor, Carmen Cornelius, program director, National Indian School Board Association, Albuquerque, NM 55
  Prepared statement 57

ADDITIONAL MATERIAL SUBMITTED FOR INCLUSION IN THE RECORD

Savilla, Elmer M., executive director, National Tribal Chairmen's Association, Washington, DC, statement 65

APPENDIX

Exhibit 1: Navajo tribal position statement on closure and consolidation plans and related material 134
Exhibit 2: Letter from Peterson Zah, chairman, Navajo Tribal Council, to Deputy Assistant Secretary for Indian Affairs John W. Fritz, with enclosures 176

S. 1349—S. 1398

WEDNESDAY, JULY 17, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 485, Russell Senate Office Building, Senator James Abdnor (acting chairman) presiding.

Present: Senators Abdnor and Burdick.

Staff present: Peter Taylor, staff director; Michael Mahsetky, staff attorney; and Virginia Boylan, staff attorney.

Senator ABDNOR. The Select Committee on Indian Affairs will come to order.

I want to welcome everyone to Washington, those of you I know have traveled long distances just to be here today. I welcome all of you to this hearing of the Senate Select Committee on Indian Affairs.

We are here this morning to receive testimony on two bills before this committee: S. 1349, a bill providing for the use and the distribution of funds awarded in Docket No. 363 to five Sioux tribes by the U.S. Court of Claims; and S. 1398, a bill amending title XI of the Education Amendments of 1978 relating to Indian education programs. First, we will take up S. 1349, the judgment distribution bill.

On June 25, I introduced this bill with Senator Pressler, also of South Dakota. S. 1349 governs the use and the distribution of the court of claims awards to the Santee Sioux Tribe of Nebraska, the Flandreau Santee Sioux Tribe of South Dakota, and three Minnesota Indian communities—the Prairie Island Community, the lower Sioux Community, and the Shakopee Community.

The awards were made by the court in compromise settlements arising from accounting claims brought by the tribes under treaties and the Forfeiture Act. Congress has appropriated the funds to satisfy these awards.

The bill provides that the awards will be distributed based on the 1934-35 census, as follows: 58.69 percent to the Santee Sioux Tribe; 15.84 percent to the Flandreau Santee Sioux Tribe; and 25.47 percent to the three Minnesota communities, to be further divided based on their memberships as of the date of enactment of this bill.

In addition, there is a separate award to the Santee Sioux Tribe and one to the Flandreau Tribe that are also subject to the bill's provisions.

Since the introduction of this bill, two tribes have requested changes to the sections of S. 1349 dealing with the use and distribution of their shares. I do not have any problems with the requested changes, and I believe that the Bureau of Indian Affairs does not object to these requests.

In all cases, the tribes will use a portion of their awards for tribal programs to enhance the social and economic development of their tribe. The balance of their award money will be used for per capita distributions and/or to establish investment funds designed to yield periodic dividend payments to their members.

At this point, without objection, I will place a copy of S. 1349 and S. 1398 into the hearing record.

[The bills follow:]

II

99TH CONGRESS
1ST SESSION

S. 1349

To provide for the use and distribution of funds awarded in docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court.

IN THE SENATE OF THE UNITED STATES

JUNE 25 (legislative day, JUNE 3), 1985

Mr. ABDNOR (for himself and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of funds awarded in docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other law, the Mdewakanton-Wahpekute Sioux funds appropriated on January 30, 1981 ($800,000), on October 15, 1982 ($591,058), and one-half of the funds appropriated on March 2, 1981 ($7,500), all in docket numbered 363 before the United States Court of Claims, and the funds appropriated on August 1, 1983

($3,468,246.48), in docket numbered 363 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter the "Secretary") in terms of 58.69 per centum to the Santee Sioux Tribe of Nebraska, 15.84 per centum to the Flandreau Santee Sioux Tribe, and 25.47 per centum to the Prairie Island, Lower Sioux, and Shakopee Communities of Minnesota to be further divided on the basis of the respective numbers of members of each of the three communities born on or prior to and living on the date of this Act. To the share of the Santee Sioux Tribe of Nebraska shall be added $172,363.20, and to the share of the Flandreau Santee Sioux Tribe $135,244.32, both sums appropriated on August 1, 1983, in docket numbered 363, less attorney fees and litigation expenses, and including all interest and investment income accrued.

SEC. 2. The share of the Santee Sioux Tribe of Nebraska shall be used and distributed as follows:

(a) Eighty per centum of the funds shall be utilized for per capita distribution, an Elderly Assistance Program, and an Investment Program:

(1) the Secretary shall make a per capita distribution of $300 to each tribal member born on or prior to and living on the date of this Act;

(2) the Secretary shall make a payment designed to assist the elderly members of the tribe. One year from the date that the per capita payments in paragraph (1) of this subsection are made, an additional per capita payment of $600 shall be made to each living tribal member of at least sixty years of age. For those elderly members who are legally incompetent or incapacitated the tribal governing body shall make recommendations to the Secretary in order to achieve the utmost benefit from the Elderly Assistance Program; and

(3) the balance of the 80 per centum portion of the funds, and any amounts remaining from the per capita and elderly assistance payments, shall be utilized in a Tribal Investment Program designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. The Secretary shall invest this portion of the funds, which shall be known as the Tribal Investment Fund, and only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary, and the first of such payments shall not be made earlier than five years from the date

of the per capita payment in paragraph (1) of this subsection. The disbursement of minors' dividend payments shall be made according to a plan developed by the tribal governing body and approved by the Secretary.

(b)(1) Twenty per centum of the funds shall be utilized for tribal social and economic development purposes, and for the establishment of a tribal burial fund; $200,000 of such program funds shall be invested by the Secretary for the purpose of establishing a burial fund utilizing the interest and investment income accrued. Such funds shall not be available for burial services until two years after the date of initial investment. The tribal governing body, with the approval of the Secretary, shall develop criteria for the implementation of tribal burial services.

(2) The balance of the 20 per centum portion shall be invested by the Secretary and the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the tribe. None of the 20 per centum programming portion of the funds shall be available for per capita or dividend payments.

SEC. 3. The share of the Flandreau Santee Sioux Tribe shall be used and distributed as follows:

(a) The Secretary shall make a per capita distribution to all tribal members born on or prior to and living on the date of the enactment of this Act. The Secretary shall make a per capita distribution of $500 to all tribal members under the age of 60 years and a $1,000 per capita distribution to all tribal members sixty years or older as of the date of the enactment of this Act.

(b) The balance of the funds, and any amounts remaining from the per capita share shall be utilized by the Flandreau Santee Sioux tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the tribe. No less than 20 per centum of the funds will be used for programming purposes.

SEC. 4. The share of the Prairie Island Sioux Community shall be used and distributed as follows:

(a) Eighty per centum of the funds shall be utilized in a tribal investment program designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. The Secretary shall invest this portion of the funds, which shall be known as the Tribal Investment Fund, and only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the

Secretary. The disbursement of minors' dividend payments shall be made according to a plan developed by the tribal governing body and approved by the Secretary.

(b) Twenty per centum of the funds shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the tribe. None of the 20 per centum programming portion of the funds shall be available for per capita or dividend payments.

SEC. 5. The share of the Lower Sioux Indian Community shall be used and distributed as follows:

(a) Eighty per centum of the funds shall be utilized for per capita distribution, an Elderly Assistance Program, and an Investment Program:

(1) the Secretary shall make a per capita distribution of $300 to each tribal member born on or prior to and living on the date of the enactment of this Act;

(2) the Secretary shall make a payment designed to assist the elderly members of the tribe. One year from the date that the per capita payments in paragraph (1) of this subsection are made, an additional per capita payment of $300 shall also be made to each living tribal member of at least sixty years of age. For those elderly members who are legally incompetent or incapacitated the tribal governing body shall make rec-

ommendations to the Secretary in order to achieve the utmost benefit from the elderly assistance program; and

(3) the balance of the 80 per centum portion of the funds, and any amounts remaining from the per capita and elderly assistance payments, shall be utilized in a tribal investment program designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. The Secretary shall invest this portion of the funds, which shall be known as the Tribal Investment Fund, and only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary, and the first of such payments shall not be made earlier than five years from the date of the per capita payment in paragraph (1) of this subsection. The disbursement of minors' dividend payments shall be made according to a plan developed by the tribal governing body and approved by the Secretary.

(b) Twenty per centum of the funds shall be invested by the Secretary and the interest and investment income accured shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the tribe. None of the twenty percent programming portion of the funds shall be available for per capita or dividend payments.

SEC. 6. The share of the Shakopee Mdewakanton Sioux community shall be used and distributed as follows:

(a) Eighty per centum of the funds shall be utilized in a tribal investment program designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. The Secretary shall invest this portion of the funds, which shall be known as the Tribal Investment Fund, and only the interest and investment income accured thereon shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary. The disbursement of minors' dividend payments shall be made according to a plan developed by the tribal governing body and approved by the Secretary.

(b) Twenty per centum of the funds shall be invested by the Secretary and the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the tribe. None of the 20 per centum programming portion of the funds shall be available for per capita or dividend payments.

GENERAL PROVISION

SEC. 7. No person enrolled with more than one of the five tribes cited in this Act shall receive per capita or dividend payments as a member of more than one such tribe. Such person shall be required to establish membership in one such tribe prior to receiving such per capita or dividend payment. The per capita shares or dividend payments of living, competent adults shall be paid directly to them. The shares or payments of decreased individual beneficiaries shall be determined and distributed in accordance with regulations prescribed by the Secretary. The shares or payments of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2512; 25 U.S.C. 1403).

SEC. 8. None of the funds distributed per capita or as dividend payments or made available under this Act for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

○

II

99TH CONGRESS
1ST SESSION

S. 1398

To amend title XI of the Education Amendments of 1978, relating to Indian education programs.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 1985

Mr. ANDREWS (for himself, Mr. MELCHER, Mr. DECONCINI, Mr. ABDNOR, and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To amend title XI of the Education Amendments of 1978, relating to Indian education programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Indian Education Technical Amendments Act of 1985".

(b) REFERENCE.—References in this Act to "the Act" refer to the Education Amendments of 1978.

SEC. 2. STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS.

(a) ESTABLISHMENT OF STANDARDS.—Section 1121(d) of the Act (25 U.S.C. 2001(d)) is amended by adding at the end thereof the following new sentences: "Such revised standards shall be established by the Secretary unless such standards are specifically rejected by the Secretary for good cause and the Secretary notifies each affected tribe and local school board in writing of such rejection. Such rejection shall be final and not reviewable.".

(b) IMPLEMENTATION OF STANDARDS.—Section 1121(e) of the Act is amended—

(1) by striking out "Within two years" and all that follows through "Education Assistance Act" in paragraph (2) and inserting in lieu thereof the following: "Within two years after the date of enactment of the Indian Education Technical Amendments Act of 1985, or two years after the date of the initial contract for the provision of educational services under the Indian Self-Determination and Education Assistance Act, whichever is later,";

(2) by adding at the end of paragraph (2) the following: "The Secretary shall not rescind or fail to renew a contract because of this paragraph until at least one year after notifying the school of a failure to

comply. During such one-year period, the Secretary shall render technical assistance to aid the school to comply."; and

(3) by striking out "through contract with a national Indian organization, establish" in paragraph (2) and inserting in lieu thereof the following: "either directly or through contract with an Indian organization, establish a consistent system of".

(c) PERSONNEL ACTIONS.—Section 1121(f) of the Act is amended by striking out the last sentence.

(d) CLOSING, CONSOLIDATION, AND CURTAILMENT.—Section 1121(g) of the Act is amended—

(1) in paragraph (1), by striking out "no school operated by the Bureau of Indian Affairs on January 1, 1984, may be closed or its program curtailed" and inserting in lieu thereof "no school or peripheral dormitory operated by the Bureau of Indian Affairs on or after the date of enactment of the Indian Education Technical Amendments Act of 1985 may be closed or consolidated or have its program substantially curtailed";

(2) by adding at the end of such paragraph the following new sentence: "The requirements of this of this subsection shall not apply when the closure, consolidation, or substantial curtailment is required by

plant conditions which constitute an immediate hazard to health and safety.";

(3) in paragraph (2) by striking out "closing or consolidation" and inserting in lieu thereof "closing, consolidation, or substantial curtailment"; and

(4) by striking out paragraphs (3), (4), and (5) and inserting in lieu thereof the following:

"(3) Such standards and procedures shall require that whenever closure, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of Interior, the affected tribe, tribal governing body, and designated local school board will be notified as soon as such consideration or review begins, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review. When a formal decision is made to close, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated local school board shall be notified at least 6 months prior to the end of the school year preceding the proposed effective date. Copies of any such notices and information shall be transmitted promptly to the Congress and pubiished in the Federal Register.

"(4) The Secretary shall make a report to Congress, the affected tribe, and the designated local school board describing the process of the active consideration or review referred to in paragraph (3). At a minimum, the report shall include a study of the impact of such action on the student population, with every effort to identify those students with particular educational and social needs, and to insure that alternative services are available to such students. Such report shall include the description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students. No irreversible action may be taken in furtherance of any such proposed school closure, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) until the end of the first full academic year following the academic year in which such report is made.".

SEC. 3. SCHOOL BOUNDARIES.

Section 1124(b) of the Act is amended to read as follows:

"(b) On or after the date of enactment of the Indian Education Technical Amendments Act of 1985, no attendance area shall be changed or established with respect to any such school unless the tribal governing body or the local school board (if so designated by the tribal governing body) has been (i) afforded at least six months notice of the intention of the Bureau to change or establish such attendance area, and (ii) given the opportunity to propose alternative boundaries. Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs.".

SEC. 4. BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS.

(a) COORDINATION.—Section 1126(b) of the Act (25 U.S.C. 2006(b)) is amended by striking out the second sentence and inserting in lieu thereof the following: "The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau Offices and the Office to facilitate the consideration of all contract functions relating to education, except that the Secretary shall review the applications for the new school starts which were filed with the Bureau before October 1, 1984, under the rules and guidelines in effect on the date the application was filed.".

(b) FACILITIES.—Section 1126(d) of the Act is amended—

(1) in paragraph (1), by striking out "and" at the end of subparagraph (A), by striking out the period at

the end of subparagraph (B) and inserting in lieu thereof "; and", and by inserting after subparagraph (B) the following new subparagraph:

"(C) including a 5-year plan for capital improvements.";

(2) by striking out the second sentence of paragraph (2);

(3) by striking out "the allocation" in paragraph (2)(C) and inserting in lieu thereof "a notice of an allocation";

(4) in paragraph (2), by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and", and by inserting after subparagraph (C) the following new subparagraph:

"(D) a system for the conduct of routine preventive maintenance.";

(5) by striking out "expended or transferred" in the next to last sentence of paragraph (2) and inserting in lieu thereof "authorized for expenditure";

(6) by striking out paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(7) in paragraph (3), as so redesignated, by striking out "Indian Education Amendments of 1984" and

inserting in lieu therof "Indian Education Technical Amendments Act of 1985".

SEC. 5. ALLOTMENT FORMULA.

(a) Special Cost Factors.—Section 1128(a)(2) of the Act (25 U.S.C. 2008(a)(2)) is amended—

(1) by inserting "and" at the end of subparagraph (G);

(2) by striking out "and" at the end of subparagraph (H); and

(3) by striking out subparagraph (I).

(b) Separate Fund for Employee Costs.—Section 1128(e) of the Act is amended to read as follows:

"(e) Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.".

SEC. 6. UNIFORM DIRECT FUNDING AND SUPPORT.

(a) Availability of Appropriations.—Section 1129(a) of the Act (25 U.S.C. 2009(a)) is amended—

(1) by striking out "this section" each place it appears and inserting in lieu thereof "section 1128";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by adding at the end of paragraph (1) the following new sentence: "Amounts appropriated for distribution under this section may be made available

under paragraph (2) or under paragraph (3), as provided in the appropriation Act.";

(4) by inserting after paragraph (1) the following new paragraph:

"(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 1128, amounts appropriated in the appropriations Act for any fiscal year shall become available for obligation by the affected schools on October 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available through six months of the succeeding fiscal year. In order to effect the transition to the advance funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriations Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

"(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

"(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section

1128 of 75 per centum of such appropriations, based on the school's student court for the preceding academic year; and

"(ii) publish no later than November 1 of the fiscal year for which funds are appropriated the allotments to be made from the remaining 25 per centum, adjusted to reflect actual student court, such funds to be immediately available for obligation by the affected schools.";

(5) by striking out "Notwithstanding any law" in paragraph (4) (as redesignated by paragraph (1) of this subsection) and inserting in lieu thereof "Pursuant to guidelines established by the Assistant Secretary, notwithstanding any law"; and

(6) by striking out "expend no more than 10 percent" in such paragraph and inserting in lieu thereof "expend no more than $25,000 annually".

(b) USE OF SELF-DETERMINATION GRANTS.—Section 1129(c) of the Act is amended—

(1) by striking out "shall institute a program" and inserting in lieu thereof "may approve applications"; and

(2) by inserting before the period at the end thereof the following: "from funds appropriated pursuant to section 104(a) of such Act".

SEC. 7. ANNUAL REPORTING.

Section 1136(b) of the Act (25 U.S.C. 2016(b)) is amended by striking out "the Bureau, the Office, and".

SEC. 8. VOLUNTARY SERVICES.

Section 1140 of the Act (25 U.S.C. 2020) is amended—

(1) by striking out "an officer or employee of the Bureau or the Office" and inserting in lieu thereof "the Secretary"; and

(2) by adding the following at the end thereof: "An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.".

SEC. 9. ADDITIONAL TECHNICAL AMENDMENTS.

(a) Redesignation.—Sections 1141, 1142, and 1143 of the Act (as added by the Education Amendments of 1984) are redesignated as sections 1140A, 1140B, and 1140C, respectively.

(b) Extracurricular Activities.—Section 1140B of the Act (as so redesignated) is amended—

(1) by striking out "Secretary shall provide" in subsection (a) and inserting in lieu thereof "Secretary may provide, for each Bureau area,";

(2) by striking out subsection (b); and

(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(c) HOUSING.—Section 1140C of the Act (as so redesignated) is amended—

(1) by striking out "90 percent" in subsection (b) and inserting in lieu thereof "40 percent";

(2) by striking out "aid the school" in such subsection and inserting in lieu thereof "aid an isolated school"; and

(3) by striking out "in non-pay status" in subsection (c) and inserting in lieu thereof "in involuntary non-pay status and who have not obtained employment".

SEC. 10. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b) but notwithstanding any other provision of law, the amendments made by this Act and by the Indian Education Amendments of 1984 to title XI of the Education Amendments of 1978 shall be effective on the date of enactment of this Act and shall apply with respect to any expenditure of funds for the operation or support of Bureau of Indian Affairs schools and Indian controlled contract schools for school years beginning after August 1, 1985.

(b) EXCEPTION.—The amendments made by sections 504, 505, and 506 of the Indian Education Amendments of 1984 shall be effective on October 1, 1985.

○

Senator ABDNOR. I know that our witnesses here today have had the opportunity to study S. 1349 and to speak with committee staff. I appreciate the help of the Bureau staff in seeing that this bill reflects the desires of the tribes involved. Now, we are here today to hear the witnesses' suggestions and comments on the bill. I firmly believe there is no better way to gather constructive comments than when you listen to the people who have to live with our legislative actions.

Before we do that, I am very happy that one of the most active and interested members of our committee, Senator Burdick of North Dakota, has come in. Senator, do you have any comments you want to make?

Senator BURDICK. Not at the moment.

Senator ABDNOR. Not at the moment. Fine.

First, we will hear from the Department of the Interior witness, Ms. Hazel Elbert, Acting Director of Indian Services, the Bureau of Indian Affairs, Washington, DC. Ms. Elbert, please come forward and present your testimony. Welcome, Ms. Elbert.

STATEMENT OF HAZEL ELBERT, ACTING DIRECTOR OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Ms. ELBERT. Thank you, Mr. Chairman. I am pleased to be here today to present the views of the Department of the Interior on S. 1349, a bill to provide for the use and distribution of funds awarded in docket No. 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the U.S. Court of Claims and claims court. S. 1349 provides for the distribution of funds appropriated to pay judgment, awarded to the Mdewakanton and Wahpekute Sioux Tribe, the Santee Sioux Tribe of Nebraska, and the Flandreau Santee Sioux Tribe. The amounts for each tribe are shown on the attachment to my statement.

We support enactment of S. 1349. The tribes sharing in this award have each prepared appropriate plans for using their funds. However, two of the tribes have requested revisions in their plans. The Santee Sioux Tribe of Nebraska requested that the extra payments to be made to elderly members of the tribe, made simultaneously with the per capita payments rather than 1 year after the per capita payments, as presently in the bill. The Flandreau Santee Sioux Tribe requested that 75 percent of the funds be used for tribal Social and Economic Development Programs, and 25 percent be distributed per capita, with members 60 years and older receiving twice the amount of other per capita payments. The bill now provides that $500 be distributed per capita except for Flandreau Santee Sioux tribal members 60 years and older, who would receive $1,000, while 20 percent of the funds and the balance of funds after per capita payments would be used for tribal programs.

We support these provisions, and the necessary amendments are attached to this statement. Also, we have discussed some minor technical amendments with the staff of this committee and we are working with them to meet our concerns.

This concludes my prepared statement. I will be pleased to answer any questions you may have.

[Ms. Elbert's prepared statement on behalf of the Department of the Interior, follows:]

STATEMENT OF HAZEL E. ELBERT, ACTING DIRECTOR OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1349, "TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED IN DOCKET 363 TO THE MDEWAKANTON AND WAHPEKUTE EASTERN OR MISSISSIPPI SIOUX BEFORE THE UNITED STATES COURT OF CLAIMS AND CLAIMS COURT."

JULY 17, 1985

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of the Interior on S. 1349, "To provide for the use and distribution of funds awarded in Docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court."

S. 1349 provides for the distribution of funds appropriated to pay judgment awarded to the Mdewakanton and Wahpekoota Sioux Tribe, the Santee Sioux Tribe of Nebraska and the Flandreau Santee Sioux Tribe. The amounts for each tribe are shown on the attachment to this statement.

We support enactment of S. 1349. The tribes sharing in this award have each prepared appropriate plans for using their funds. However, two of the tribes have requested revisions in their plans. The Santee Sioux Tribe of Nebraska requested that the extra payments to be made to elderly members of the Tribe be made simultaneously with the per capita payments rather than one year after the per capita payments as presently in the bill. The Flandreau Santee Sioux Tribe requested that 75 percent of the funds be used for tribal social and economic development programs and 25 percent be distributed per capita with members 60 years and older receiving twice the amount of other per capita payments. The bill now provides that $500 be distributed per capita except for Flandreau Santee Sioux tribal members 60 years and older who would receive $1,000, while 20 percent of the funds and the balance of funds after per capita payments would be used for tribal programs.

We support these revisions and the necessary amendments are attached to this statement. Also, we have discussed some minor technical amendments with the staff of this Committee and are working with them to meet our concerns.

This concludes my prepared statement. I will be happy to answer any questions you may have.

ATTACHMENT A

BACKGROUND OF THE AWARDS

On July 23, 1983, the United States Claims Court in Docket 363 granted an award to the Eastern or Mississippi Sioux in the amount $8,500,000. This compromise settlement included the following allocations by the Court.

1. Mdewakanton and Wahpekoota (Wahpekute) Sioux	$3,468,246.48
2. Sisseton and Wahpeton Sioux	3,770,593.68
3. Santee Sioux Tribe of Nebraska	172,363.20
4. Flandreau Santee Sioux Tribe	135,244.32
5. Sisseton-Wahpeton Sioux Tribe of South Dakota	902,820.80
6. Devils Lake Sioux Tribe	50,731.52

S. 1349 provides for the distribution of funds to the Mdewakanton and Wahpekoota Sioux, the Santee Sioux Tribe of Nebraska and the Flandreau Santee Sioux Tribe.

Also included in this legislation is an award made on September 24, 1982 by the United States Court of Claims for $513,000 to the Mdewakanton and Wahpekoota (Wahpekute) Sioux in settlement of their accounting claim under the Treaty of August 5, 1851. On the same date in the same docket the Mdewakanton and Wahpekoota were granted $78,058 in settlement of their accounting claim under the Treaty of June 19,1858. The total award of $591,058 was appropriated on October 15, 1982.

On January 16, 1981, the United States Court of Claims granted to the plaintiff Lower Sioux Indian Community, et. al., an award of $800,000 in an accounting claim arising under the Mdewakanton Sioux Treaty of September 29, 1837. The award of $800,000 represents a compromise settlement. Funds to satisfy the award were appropriated on January 30, 1981.

Finally, an award of $15,000 was granted by the Court to the same plaintiffs on January 30, 1981 with the specification that the amount be divided evenly between the Sisseton and Wahpeton Bands and the Mdewakanton and Wahpekoota Bands. The award, settled by compromise, derives from an accounting of funds under the Treaty of July 15, 1830. Funds were appropriated on March 2, 1981.

ATTACHMENT B

Proposed Amendments to S. 1349

To provide for the revision requested by the Santee Sioux Tribe of Nebraska section 2(a)(2), page 3, line 2, should be amended by striking the words "one year from the date that the per capita payments in paragraph (1) of this subsection are made" and inserting "At the same time the per capita payments are made under paragraph (1)".

To provide for the revision requested by the Flandreau Santee Sioux Tribe section 3, page 4, line 24 should be deleted and the following inserted:

> "Sec. 3. The share of the Flandreau Santee Sioux Tribe shall be used and distributed as follows:
>
> (a) Seventy-five percent of the funds (including the interest and investment income accrued) shall be used by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhanced the social and economic development of the tribe.
>
> (b) The Secretary shall distribute 25 percent of the funds (including the interest and investment income accrued) per capita to each tribal member living on the date of the enactment of this Act. The per capita shares of tribal members 60 years of age or older as of the date of the enactment of this Act will be twice that of other per capita payments. Funds remaining after the per capita distribution (excluding the per capita shares of legally imcompetent adults and minors held in trust) shall be added to the funds under paragraph (a) of this section."

Senator ABDNOR. Well, thank you, Ms. Elbert. I guess a couple of the questions that were in my mind, you have already answered. Then the Bureau firmly approves of the suggested changes for the Santee Sioux and the Flandreau Santee Sioux?

Ms. ELBERT. Yes, we do, Mr. Chairman.

Senator ABDNOR. Fine. There are just a few technical changes that we would like to make in this legislation, basically in those sections that provide for the distribution of funds to members who are either "legally incompetent, incapacitated, or minors."

Now, it's my understanding that the Indian Judgment Act provides for the safeguarding of moneys distributed to those who are either legally incompetent or minors, as pointed out in section 7 of this bill. Therefore, we would like to strike the language where it appears in the sections dealing with individual tribes' awards and just include the general statement. Do you think that would have merit?

Ms. ELBERT. We would have no objection to those changes, sir.

Senator ABDNOR. Very fine. We would also like to strike the word "incapacitated," as this does not appear to have clear legal meaning and should be covered by the phrase, "legally incompetent." Now, any quarrels with that?

Ms. ELBERT. We have no problem with that change, sir.

Senator ABDNOR. Good. We're getting along fine here aren't we.

Ms. ELBERT. We are.

Senator ABDNOR. I appreciate that, and I really don't have any more questions.

Senator Burdick, would you?

Senator BURDICK. This is essentially a distribution of judgment funds, isn't it?

Ms. ELBERT. Yes; it is.

Senator BURDICK. Does this take care of all the balance in the account, after this distribution is made?

Ms. ELBERT. Of this particular docket?

Senator BURDICK. Yes.

Ms. ELBERT. Yes; it does.

Senator BURDICK. Do the tribal people agree with this?

Ms. ELBERT. Yes; they do.

Senator BURDICK. That is all.

Senator ABDNOR. Thank you.

Thank you very kindly, Ms. Elbert.

Our next witnesses will be a panel of those vitally interested and affected by this legislation, who have come from far off to be here today: Joseph Campbell, who is vice chairman of Prairie Island Community Council of Minnesota; Michael Prescott, chairman of the Lower Sioux Indian Community; Richard Kitto, chairman of the Santee Sioux Tribal Council of Nebraska; and Samuel H. Allen, treasurer/secretary of the Flandreau Santee Sioux Tribe of South Dakota.

We will have to bring chairs up and I would ask all four of you people, if you would, just to come forward. I want you all to be comfortable. Some of you may be a bit lower than the others. I don't know. Gentlemen, we welcome you all to our hearing and we are happy you were able to come in and testify. I think some of you have been before us before, or other committees in Congress.

I guess you probably all have prepared statements, and I can assure you your entire statement, as prepared, will be placed in the record as though given. If you would care to just summarize or briefly go through the substance of your statement, that will be fine, too.

If you don't mind, I guess the privilege of being the acting chairman up here at this moment gives me a little privilege to be parochial. I am going to call on the gentleman from South Dakota, Mr. Sam Allen, to start us off. Sam, would you care to go ahead? You would probably rather not have that, but nevertheless.

STATEMENT OF SAMUEL H. ALLEN, TREASURER/SECRETARY, FLANDREAU SANTEE SIOUX TRIBE, FLANDREAU, SD

Mr. ALLEN. The Flandreau Santee Sioux Tribe is in favor of this bill, S. 1349, as written, and has agreed to it by resolution 85-10. The Flandreau Santee Sioux Tribe would like to request that 75 percent of their portion of judgment funds be used for economic development and 25 percent for a per capita payment.

Senator ABDNOR. Thank you, Sam. You say a lot in a few words. I know you had a long trip getting in here last night, but we're happy you made it so you could give us your thoughts on this bill.

Now, Mr. Campbell, we are happy to have you here and anxiously awaiting your statement.

STATEMENT OF JOSEPH CAMPBELL, VICE CHAIRMAN, PRAIRIE ISLAND COMMUNITY COUNCIL, WELCH, MN

Mr. CAMPBELL. Mr. Chairman and members of the committee, I am pleased to be here today to present the views of the Prairie Island Community Council on S. 1349. On April 22, 1985, the Prairie Island Council passed a resolution, No. 09-85, in support of the prompt distribution of funds from the judgment award in docket No. 363.

I would be happy to answer any questions that you may have.

[The material referred to by Mr. Campbell follows:]

Prairie Island Community Council
R.R. 2, Box 1000
Welch, MN 55089

JOSEPH CAMPBELL
Vice-Chairman

LUCY TAYLOR
Secretary

VINE H. WELLS
Chairman

NORA RED ELK
Treasure

ALBERT WHITE
Secretary-Treasure

July 16, 1985

Senate Select Committee:

We hereby voice our Strong Support for Senate Bill 1349.

Enclosed is our copy of Resolution # 09-85 dated April 19, 1985, as well as a copy of Sec. 4, as it pertains and is understood by our community.

Respectfully,

Vine H. Wells
Vine H. Wells
Tribal Chairman

Prairie Island Community Council

R.R. 2, Box 1000
Welch, MN 55089

JOSEPH CAMPBELL
Vice-Chairman

VINE H. WELLS
Chairman

NORA RED ELK
Treasure

LUCY TAYLOR
Secretary

ALBERT WHITE
Secretary-Treasure

RESOLUTION #09-85

WHEREAS, the Prairie Island Tribal Council has the power under the Constitution and By-Laws of the Prairie Island Sioux Community to promulgate resolutions governing the conduct of business in the Community; and

WHEREAS, the Prairie Island Community Council desires a prompt distribution of judgement funds awarded in Docket 363; and

WHEREAS, The attached distribution proposal has been studied and discussed by the Prairie Island Community Council

NOW THEREFORE BE IT RESOLVED, that the Prairie Island Community Council approves the attached distribution proposal and directs the Secretary of Interior to adopt this proposal for the distribution of funds in Docket 363 awarded to the Prairie Island Indian Community.

CERTIFICATION

We do hereby certify that this resolution was passed at a Special meeting with a quorum present of a vote of 3 for, 0 opposed and 0 abstentions at the Praire Island Community Center on April 19, 1985.

Vine H. Wells

Vine H. Wells - Chairman

Lucy Taylor

Lucy Taylor - Secretary

4-22-85

DATE

SEC. 4 The share of the Prairie Island Sioux Community shall be used and distributed as follows:

(a) Eighty (80) percent of the funds shall be utilized in a tribal investment program designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. The Secretary shall invest this portion of the funds, which shall be known as the Tribal Investment Fund, and only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary. The disbursement of minors dividend payments shall be made according to a plan developed by the tribal governing body and approved by the Secretary.

(b) Twenty (20) percent of the funds shall be utilized by the tribal governing body on an annual budgetary basis, with the approval of the Seretary, for programs designed to enhance the social and economic development of the tribe. None of the twenty percent programing portion of the funds shall be available for per capita or dividend payments.

Senator ABDNOR. Before we go on to questions, I think we will hear from all of you and then come back and ask you questions together, if we can. Thank you, Mr. Campbell.

Our next witness is Michael Prescott, who is the chairman of the Lower Sioux Indian community of Minnesota. Michael, we certainly welcome you to the hearing. You proceed in any fashion you care to.

STATEMENT OF MICHAEL PRESCOTT, CHAIRMAN, LOWER SIOUX INDIAN COMMUNITY, MORTON, MN

Mr. PRESCOTT. Thank you, Senator Abdnor and committee, on behalf of the Lower Sioux Indian Community. Thank you for your time and commitment to resolve the situation with docket 363, as being presented in bill S. 1349. I have a prepared statement that has been submitted—

Sentor ABDNOR. It will be placed in the record. You bet.

Mr. PRESCOTT [continuing]. I appear to reaffirm our resolution number 1085 supporting the distribution of the funds. We appreciate the time and effort that the Department of the Interior's Bureau of Indian Affairs staff have put into the bill and arrangements for this hearing.

Attached also to our prepared statement is a letter of support from Senator Rudy Boschwitz of Minnesota which was sent to the Lower Sioux community on June 28.

We thank you for your continued support.

[Mr. Prescott's prepared statement, on behalf of the Lower Sioux Indian Community, with attachments, follows:]

PREPARED STATEMENT OF MICHAEL PRESCOTT, CHAIRMAN, LOWER SIOUX INDIAN COMMUNITY, MORTON, MN

On behalf of the Lower Sioux Indian Community, I thank you for your time and commitment to resolve the situation with Docket 363, as being presented in Senate Bill 1349. I am here to re-affirm our Resolution Number 10-85 supporting the following distribution of funds:

> Eighty percent of the funds shall be utilized for per capita distribution, an Elderly Assistance Program, and an Investment Program:
>
> a. the Secretary shall make a per capita distribution of $300 to each tribal member born on or prior to and living on the date of the enactment of the Act;
>
> b. the Secretary shall make a payment designed to assist the elderly members of the tribe. One year from the date that the per capita payments are made. $300 shall also be made to each living tribal member of at least sixty years of age. For those elderly members who are legally incompetent or incapacitated the tribal governing body shall make recommendations to the Secretary in order to achieve the utmost benefit from the elderly assistance program; and
>
> c. the balance of the 80 per cent portion of the funds. and any amounts remaining from the per capita and elderly assistance payments. shall be utilized in a tribal investment program designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. The Secretary shall invest this portion of the funds. which shall be known as the Tribal Investment Fund. and only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary. and the first of such payments shall not be made earlier than five years from the date of the per capita payment in paragraph (a) of this sub-section. The disbursement of minors' dividend payments shall be made according to a plan developed by the tribal governing body and approved by the Secretary.
>
> Twenty per cent of the funds shall be invested by the Secretary and the interest and investment income accured shall be utilized by the tribal governing body on a budgetary basis. with the approval of the Secretary. for programs designed to enhance the social and economic development of the tribe. None of the twenty per cent programming portion of the funds shall be available for per capita or dividend payments.

The Lower Sioux Indian Community wishes to thank you for your continued support in helping us to build our community into a competitive and productive economic development center in Southwest Minnesota.

Lower Sioux Indian Community

POST OFFICE BOX 308
RURAL ROUTE 1
MORTON, MINNESOTA 56270

PHONE 507 697-6185

RESOLUTION NO. 10-85

WHEREAS, Congress by enactment of P.L. 93-638 provided a mechanism for Indian Tribes to exercise the right of SELF-DETERMINATION, and

WHEREAS, The Lower Sioux Community Council has the power under the Constitution and By-Laws of the Lower Sioux Community to promulgate Resolutions governing the conduct of Business in and for the Community; and

WHEREAS, The Lower Sioux Indian Community Council hereby supports and is in favor of pursuing immediate economic development through the investment of 20% of their judgment funds for economic development, and

NOW THEREFORE BE IT RESOLVED: That the Lower Sioux Community Council rescinds all previous distribution proposals for the use of judgment funds as awarded the Lower Sioux Indian Community in Docket 363 and directs the Secretary of the Interior to adopt this distribution proposal and requests that Senator James Abdnor sponsor this Distribution Bill for prompt disbursement.

CERTIFICATION:

We hereby certify that the Resolution No. 10-85 was duly presented and enacted upon by the Lower Sioux Indian Community Council meeting held on Friday, March 1, 1985, by a vote of 4 for and 0 against; with a quorum being present.

4-4-85
DATE

Michael Prescott
MICHAEL PRESCOTT, CHAIRPERSON

Janice Gentry
JANICE GENTRY, SECRETARY

CHARLES H. PERCY, ILL., CHAIRMAN

OWARD H. BAKER, JR., TENN.
ESSE HELMS, N.C.
ICHARD G. LUGAR, IND.
HARLES McC. MATHIAS, JR., MD.
ANCY L. KASSEBAUM, KANS.
UDY BOSCHWITZ, MINN.
NNY PRESSLER, S. DAK.
H. MURKOWSKI, ALASKA
A HAWKINS, FLA.

CLAIBORNE PELL, R.I.
JOSEPH R. BIDEN, JR., DEL.
JOHN GLENN, OHIO
PAUL S. SARBANES, MD.
EDWARD ZORINSKY, NEBR.
PAUL E. TSONGAS, MASS.
ALAN CRANSTON, CALIF.
CHRISTOPHER J. DODD, CONN.

SCOTT COHEN, STAFF DIRECTOR
GERYLD B. CHRISTIANSON, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

June 28, 1985

Michael Prescott, Chairman
Lower Sioux Indian Community
Route 12, Box 308
Morton, MN   56270

Dear Chairman Prescott:

I wanted to let you know I've joined Senator Jim Abdnor of South Dakota as a cosponsor of S. 1349, to authorize the use and distribution of judgment funds awarded in Docket 363.

We've been assured by the Chairman of the Senate Indian Affairs Committee, Senator Mark Andrews of North Dakota, the prompt hearings will be held. I hope this legislation can be moved quickly.

Sincerely,

Rudy

Rudy Boschwitz

RB:dmm

Senator **Abdnor**. Thank you, Mr. Prescott. Let me assure you—I meant to, and I neglected saying this—Mr. Boschwitz is a strong supporter of this legislation and has cosponsored it. I just want you to know that. That was careless on my part, not to have mentioned that to start with.

Our last witness is Mr. Richard Kitto, chairman of the Santee Sioux Tribe of Nebraska. Mr. Kitton, we are happy to have you. What part of Nebraska are you from?

STATEMENT OF RICHARD L. KITTO, CHAIRMAN, SANTEE SIOUX TRIBE OF NEBRASKA

Mr. **Kitto**. Good morning, Chairman Abdnor and committee members. I am very grateful to be here today. I am from the northeastern part of Nebraska, Knox County. It's adjoining the Louis and Clarke Lake on the Missouri River.

I am here in support of S. 1349. We are in support, by resolution, of the changes that we have talked about earlier in discussion with legislative counsel and tribal legal counsel. We are very glad that the bill is moving and we hope that the bill will certainly become an Act of Congress.

[Mr. Kitto's prepared statement, on behalf of the Santee Sioux Tribe of Nebraska, follows:]

Prepared Statement of Richard L. Kitto, Chairman, Santee Sioux Tribe of Nebraska

The Santee Sioux Tribe of Nebraska supports the Bill which will provide for the use and distribution of funds awarded in Docket 363.

As you know, the Docket 363 award represents the compromise settlement arising out of claims asserted by the Eastern or Mississippi Sioux. The claims asserted fall into two categories; those under the "Forfeiture Act" and those called "non-Forfeiture Act" claims. The Forfeiture Act of February 16, 1893 is actually entitled "an act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux". Under the act, passed as a result of the Santee or Minnesota Sioux uprising of 1862, the Four Santee or Eastern Sioux bands had "forfeited" their monies due under the 1851 and 1858 treaties. The Forfeiture Act confiscated all funds then on deposit in the band's accounts, plus funds then due but not yet paid, in the annuities due under the 1851 and 1858 treaties. The treaties in question are the Sisseton and Wahpeton of July 23, 1851 and June 19, 1858; the Mdewakanton and Wahpekute of August 5, 1851 and a treaty separate from that of the Upper Council bands also of June 19, 1858.

In 1907, the Court Claims entered a judgment for the Sisseton and Wahpeton bands for the principal amounts involved; and in 1922 the Court awarded the principal amounts to the Mdewakanton and Wahpekute bands. The subject claim in Docket 363 was for the interest on those amounts.

The non-Forfeiture Act claims involve the alleged mismangement by the government of funds derived from a variety of treaties, agreements and acts of Congress extending over a period of about a century.

The Santee Sioux Tribe of Nebraska consented to the settlement and to the percentages proposed by the Department of Interior. The Santee Sioux Tribe of Nebraska developed proposals for the use and distribution of the appropriated funds. A public hearing was held at which the proposals were discussed and the tribe submitted to the Department of Interior its proposal for the distribution of the funds.

The Santee Sioux Tribe strongly supports the Bill for the use and distribution of the funds for the reason that 80% of the funds to the Santee Sioux Tribe of Nebraska will be utilized for per capita distribution, an elderly assistance program and an investment program. The per capita distribution and the elderly assistance payments will be made simultaneously; $300.00 being distributed per capita and $600.00 being distributed to each tribal member of at least 60 years of age.

The balance of the 80% and any amounts remaining from the per capita and elderly assistance program will be utilized in a tribal investment program designed to yield periodic dividends to all members born on or prior to and living on the dates such dividends payments are declared.

The 20% portion of the funds will be utilized by the Santee Sioux Tribe of Nebraska for social and economic development and the establishment of a burial fund.

Finally, the Santee Sioux Tribe of Nebraska urges your support for this legislation.

Senator ABDNOR. Well, thank you. I must say, you gentleman summarize it very well in a few words, and we thank you very much. We're moving right along here.

I have just a few questions that we do want to ask you.

One is, you heard me in my questions to Ms. Elbert, who represents the BIA, that we would like to make a few technical changes to the bill dealing with the distribution to minors and legally incompetent members. Basically, we would like to strike the term incapacitated and then put in a general provision as in section 7 to handle the distribution of moneys to minors and legally incompetent members, in accordance with the Indian Judgment Act. Now are you familiar with that or have you had time to think about it? Would any one of you care to? I would like to hear from each of you.

Mr. KITTO. Well, Mr. Chairman——

Senator ABDNOR. Yes?

Mr. Kitto [continuing]. Looking at taking out that portion of the language in the bill, there is no problem with the Santee Sioux Tribe of Nebraska. We agree with the striking of that language.

Senator ABDNOR. How about you?

Mr. ALLEN. Flandreu has no problems with amending the langauge.

Senator ABDNOR. I want to make sure none of you do.

Mr. PRESCOTT. Lower Sioux does not.

Senator ABDNOR. OK.

Mr. CAMPBELL. Prairie Island does not have any objections.

Senator ABDNOR. Good. Than I guess one other question, it is my understanding that each of your tribes has a passive resolution in support of this bill, or in some cases requesting certain changes. Is this true? First, do you all support the bill? Raise your hands so I can just—[Laughter.]

Second, are there other changes than we discussed here today that you are interested in? I mean, are we covering the change? I understand that you were interested n soe changes. Hopefully we have taken care of that. I am sure you would have brought it to our attention if you did want some, changes that you would be interested in.

Well, then, with that, gentlemen, I thank you. We did this in quick order and I am very pleased that we are all in agreement here. Thank you for your time and your comments. It may seem like a long way to come but it isn't because this is important legislation, and we certainly wanted to make sure those affected had a chance to have their opportunity to put some input into this and that it meets with their approval.

I hope we have given you the extra time—we did this so rapidly—you have a few extra hours to look around Washington. Thank you very much.

We are moving right along here. The committee will now receive testimony on S. 1398, a bill amending title XI of the Education Amendments of 1978 relating to Indian education. I am pleased to be a cosponsor of this bill, and I am hopeful that this legislation will help ensure that Indian children receive a good, solid education.

I am sorry that I may not be here for the whole period of this discussion on this legislation because, like everyone else here, we are loaded down with hearings. I do want you to know that I appreciate your coming and testifying on this legislation, and I will be looking forward to spending a few minutes with you yet.

Our first witness is Mr. John Fritz of the BIA. Mr. Fritz? We are pleased you found the time to come. You are an important part of this legislation and we're anxiously waiting to hear from you.

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT DIRECTOR FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. FRITZ. Thank you very much, Mr. Chairman. I am pleased to be here on behalf of the Department of the Interior to present our views on S. 1398, the Indian Education Technical Amendments Act of 1985.

We recommend enactment of S. 1398 with the amendments discussed in our statement and the attachments which go into the technical discussion of the details that we would like the committee to be concerned with. We think that S. 1398 makes significant improvements in the 1984 amendments to the Indian Education Act, and it would be my point to tell you that we have appreciated working with members of the committee and the committee staff to get us to this point. We urge you on the committee to act favorably upon our recommendations at the markup session.

In light of your crowded schedule, sir, I would just ask that my written statement and the attachment be submitted for the record, and I'll be happy to take any questions. Appearing also with me today will be Ms. Nancy Garrett, Deputy Director of the Office of Indian Education Programs.

Senator ABDNOR. Very good. Well, thank you, John. We appreciate your strong support of this legislation. I'm sure your statement speaks for itself. It will be placed in the record, and we thank you very much for coming forward and giving us your views on the legislation.

Mr. FRITZ. Thank you. Thank you, Mr. Chairman.

[Mr. Fritz' prepared statement, with attachments, on behalf of the Department of the Interior, follows. Testimony resumes on p. 55.]

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1398, THE "INDIAN EDUCATION TECHNICAL AMENDMENTS ACT OF 1985."

July 17, 1985

Mr. Chairman and Members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1398, the "Indian Education Technical Amendments Act of 1985".

We recommend enactment of S. 1398 with the amendments discussed in this statement and its attachment.

S. 1398 would make a number of changes in the amendments to title XI of the Education Amendments of 1978 which were enacted in sections 502-512 of P.L. 98-511, the Education Amendments of 1984. Implementation of those 1984 amendments is blocked by a provision in P.L. 98-473, the Interior and Related Agencies Appropriations Act for FY 1985. The President's FY 1986 Budget proposes to continue blocking their implementation. If S. 1398 is enacted with the amendments we recommend, it would not be necessary to further block implementation of the 1984 amendments.

In general, S. 1398 makes significant improvements in the 1984 amendments and we appreciate the work of this Committee and its staff that has led to its introduction and the scheduling of this hearing and your July 24 markup of the bill. We urge the Committee to act favorably on our recommendations at the markup session.

Attached to this statement is a detailed discussion of the concerns we have with the 1984 amendments that S.1398 would alleviate and of our other concerns that require amendments to the bill. Although each of our recommendations merit favorable action by the Congress, I would like to make special mention of certain of our concerns.

Section 512 of the 1984 amendments enacted a provision that (1) authorizes nonreviewable waivers by local BIA school supervisors (on a school-wide basis) of up to 90% of rental fees payable by educators living in Federal employee housing, and (2) waives all such rental fees otherwise payable by educators who are in a non-pay status while school is not in session. Section 9(c) of S. 1398 would amend that provision to (1) limit the waiver to 40% while school is in session, (2) allow those waivers only for educators at an "isolated school", and (3) waive all rental fees for all educators while school is not in session if they are "in involuntary non-pay status and *** have not obtained employment".

We believe the rent waiver provision is an attempt to solve a problem that can and has already been solved administratively. A change in the method of determining rents for Federal employee housing in remote locations has resulted in substantial reductions in rental rates, effective next month. Furthermore, rent waivers as a recruiting or retention incentive is not necessary because the Congress has already authorized a "postdifferential not to exceed 25 percentum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive" in section 1131(h)(3) of P L. 95-561 (25 U.S.C. 2011(h)(3)).

Although S. 1398 would reduce the financial impact of the rental waiver provision in the 1984 amendments, the Administration continues to strongly oppose the provision not only because it is unnecessary but because of (1) the potential cost, (2) its discrimination against other educators not living in Federal employee housing and other Federal employees in general, and (3) the undermining of the Secretary's authority by the delegation of final authority directly to subordinate employees.

We strongly recommend that S. 1398 be amended to include a repeal rather than an amendment of the rental waiver provision enacted in section 512 of the 1984 amendments as a new section 1143 of P.L. 95-561 (25 U.S.C. 2023).
A second concern we have is with the interpretation of the provision that would be amended by section 2(a) of S. 1398. That amendment does not address a possible interpretation of section 1129(d) of P.L. 95-561 where school standards could be waived, and the school would then be without standards permanently or for a lengthy period because alternative standards are not proposed to the Secretary. We believe that such an interpretation is not consistent with the intent of Congress. We strongly recommend that the provision be further amended in S. 1398 to provide that the waiver expires in 60 days if alternative standards are not proposed to the Secretary.

A third concern is with the part of the amendment in section 3 of S. 1398 dealing with attendance boundaries which would require the Secretary to accept boundaries proposed by a tribe unless he makes certain findings. It is more appropriate for the tribe to make a case for its proposed boundaries than it is to impose the findings requirement on the Secretary especially since the language refers to the needs of students which do not relate to attendance boundaries.

We strongly recommend that language relating to the findings be deleted and replaced by language such as that in section 2(a) of the bill relating to rejection of alternative standards.

Our fourth concern is with the forward and advanced appropriation funding provisions. Not only are such provisions unnecessary because of an earlier student count, we have serious concerns as to their workability and fairness to the schools involved by requiring earlier allocation of funds than is necessary based on old or possibly incomplete or inaccurate data. We strongly recommend that the advanced funding procedure in section 6(a)(1) through (4) of S. 1398 be deleted and that the bill include a repeal of the forward funding procedure in section 1129(a)(2) of P.L. 95-561.

The Office of Management and Budget has advised us that enactment of S. 1398 with the amendments recommended in this statement would be in accord with the program of the President.

This concludes my prepared statement and I will be pleased to answer any questions that the Committee may have.

ATTACHMENT

Issue: Section 502(a) of the 1984 amendments amended the school standards provisions in the Education Amendments of 1978 (P.L. 95-561) to require immunization for childhood diseases, including provisions for in-school immunization, where necessary. S. 1398 includes no provision on this subject.

Discussion: The Bureau of Indian Affairs (BIA) school applications ask if students have been immunized, but the BIA does not require that students be immunized before entering school. If a student has not been immunized, the school usually works with the Indian Health Service (IHS) to have the student immunized by or through the IHS.

Recommendation: Include in S. 1398 an amendment to section 1121(b)(2) of P.L. 95-561 (25 U.S.C. 2001(b)(2)) to make it clear that the establishment of the immunization standard does not alter the existing IHS responsibilty for giving or paying for the immunizations.

Issue: Section 502(b) of the 1984 amendments amends P.L. 95-561 to require tribal governing bodies to propose alternative school standards if they waive the Secretary's standards.

Discussion: P.L. 95-561 allowed tribal governing bodies or their designated school boards to waive standards in part or in whole and to propose revised standards. However, they are not required to submit alternative standards if they waive standards. The Administration's substitute for the provisions that became the Indian Education Amendments of 1984 as proposed to the House Education and Labor Subcommittee and the Conferees, would allow tribes or their designated school boards to propose supplementary standards subject to availability of other funds, but not to waive standards. It is unclear whether the provision would permit a waiver of standards to continue even if the tribe fails to propose alternative standards.

Recommendation: Section 2(a) of S. 1398 should be amended to add language in section 1121(d) of P.L. 95-561 (25 U.S.C. 2001(d)) to provide that a waiver of the standards expires if proposed alternative standards are not submitted to the Secretary within 60 days.

Issue: Section 502(c)(2) and (3) of the 1984 amendments requires that a contract school (i.e., a school operated by a tribal organization under a contract with the BIA) meet established standards or become accredited (or a candidate for accreditation) within 2 years of its initial BIA contract.

Discussion: P.L. 95-561 barred the Secretary from using as a reason for declining to contract with a tribal organization for the operation of a school, the school's failure to meet standards. The 1984 amendment would bar funding for contract schools which have had contracts for over two years if they don't meet the standards when they go into effect.

Section 2(b)(1) and (2) of S. 1398 would revise the the 1984 amendment to clarify that current contract schools must meet the standards (or be accredited or candidates) within 2 years following the date of enactment of S. 1398 and to require a one year notice to a school of their noncompliance before recinding or not renewing a contract. In addition, the Secretary would be required to provide technical assistance to a school during the notice period to aid the in achieving compliance.

Recommendation: Enact section 2(b)(1) and (2) of S. 1398.

Issue: Section 502(c)(3) of the 1984 amendments added a requirement to P.L. 95-561 that the BIA contract with a national Indian organization to establish uniform fiscal fund accounting procedures for contract schools (i.e., schools aided under a contact with the BIA).

Discussion: P.L. 95-561 did not have a provision dealing with accounting procedures. The Administration's substitute bill in the 98th Congress would would not require the BIA to contract with a national Indian organization to establish accounting procedures for contract schools. S. 1398 would amend the provision to add the option of the accounting procedures being developed "in-house" but precluding contracting for that purpose with other than a Indian organization. This is an unwarranted restriction which could prevent the development of the best possible procedures if there is no qualified Indian organization available to contract for preparation of the procedures.

Recommendation: Amend section 2(b)(3) of S. 1398 by striking out "with an Indian organization" on page 3, line 7.

Issue: Section 502(d) of the 1984 amendments added a provision to P.L. 95-561 specifying that education personnel cannot be held responsible for meeting standards if the Secretary has not requested sufficient funds to meet the standards.

Discussion: The Administration opposed the 1984 provision on the basis that it was unnecessary because the proposed school standards specificially detail when an employee is responsible for implementing standards (subpart G 36.60). The Administration arqued that this provision could result in the inability of the Bureau to enforce appropriate personnel actions. S. 1398 would repeal the provision.

Recommendation: Enact section 2(c) of S. 1398.

Issue: Section 502(e) of the 1984 amendments added a provision to P.L. 95-561 requiring the Secretary to prescribe regulations for the closure or consolidation of schools. The regulations must require immediate notification to affected tribes, schools, parents, etc. that the Bureau is considering a closure or consolidation. A study would be required of each child's placement prior to closure and a report must be made to Congress describing the plan for the closure or consolidation. No school may be closed until the end of the academic year following the academic year in which the report is sent to Congress.

Discussion: This Administration has closed and consolidated some Bureau schools; however, not without pressure to keep some of them open. The Administration opposed the 1984 amendment because it precluded timely administrative actions necessary for economy and efficiency and to provide a viable education program for Indian children. The BIA has regulations in the clearence process which provide a procedure for school closures and consolidations.

Section 2(d) of S. 1398 would make a number of changes in the 1984 provision including permitting actions necessary for health or safety reasons. The required procedure would apply to the substantial curtailment of the program of a BIA school or peripheral dormitory. It is not clear whether the provision would apply to summer programs the provision or extent of which is dependent on the resources remaining at the end of the regular school year. Also, the required report to the Congress with respect to a BIA school or peripheral dormitory must be submitted in the academic year prior to its proposed last full academic year. Such an early date precludes the use of the latest (3rd week in September) student count in reaching a decision that an action is necessary. Lastly, the provision does not apply to actions involving contract schools.

Recommendation: Amend section 2(d) of S. 1398 as follows:
(1) on page 3, line 17 insert "or financially aided under a contract" after "operated";
(2) on page 3, line 20 insert "(except a summer program)" after "program"; and
(3) on page 5, lines 14 through 16 strike out "until the end of the first full academic year following the academic year in which such report is made" and insert in lieu thereof "until the academic year end after the calendar year in which the report is submitted to Congress".

Issue: Section 503 of the 1984 amendments added a provision to P.L. 95-561 to require the Secretary to establish geographical attendance areas for each Bureau school. Tribal governing bodies have 1 year from the date of enactment of the 1984 amendments to propose boundaries. The Secretary must accept tribes proposed boundaries unless the Secretary determines that they do not meet the needs of Indian students. If a reservation has only one BIA school, the attendance boundaries will be the reservation's boundaries. Students residing near the reservation shall also receive services.

Discussion: School boundaries have been established in consultation with the tribes and have been implemented this school year and we opposed the 1984 amendment as unnecessary. S. 1398 would rewrite the provision to apply to the establishment of or changes to boundaries after enactment of the bill. Boundaries proposed by a tribe must be accepted unless the Secretary finds that they "do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs." This is an inapproriate burden for the Secretary and boundaries do not relate to student needs.

Recommendation: Section 3 of S. 1398 should be amended by deleting the language on page 6, lines 6 through 9 and inserting in lieu thereof "specifically rejected by the Secretary for good cause and the Secretary notifies the affected tribe or local school board in writing of such rejection. Such rejection shall be final and not reviewable.'".

Issue: Section 504(a) of the 1984 amendments amended P.L. 95-561 to require that all contract functions relating to education be supervised by the Director, Office of Indian Education Programs (OIEP).

Discussion: Currently OIEP staff and contract staff work together on most education contracts, however, educators do not have the authority to sign contracts. The Administration opposed the 1984 provision as unnecessary since under the preexisting language of P.L. 95-561 those functions could be under the Director's supervision, and because it requires additional staff.

Section 4(a) of S. 1398 would delete the requirement for supervision of contract functions and replaces it with language similar to that repealed by the 1984 amendment which requires the Assistant Secretary for Indian Affairs to provide for the coordination of contract functions involving education.

Section 4(a) of S.1398 also adds a new provision requiring the Secretary to "review the applications for the new school starts which were filed with the Bureau before October 1, 1984, under the rules and guidelines in effect on the date the application was filed." The provision apparently applies to two schools which would be singled out to not have to meet the new regulations for new school starts which are in the clearence process and are compatable with the views of the Senate Appropriations Committtee. Such an exception for these two schools is unwarranted and unfair to the other propsed new school starts.

Recommendation: Section 4(a) of S. 1398 should be amended by deleting all after the word "education" on page 6, line 17 and inserting a period.

Issue: Section 504(b) and (c) of the 1984 amendments added a provision to section 1126(c) of P.L. 95-561 which requires that education staff in BIA agencies under the supervision of the Director of OIEP provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions.

Discussion: The provision clearly prescribes separate OIEP personnel support services at the agency level. This change would affect about 25 or one quarter of the agency offices, since the others do not deal with personnel matters at that level. Additional staff would be required. The Administration strongly opposes separate support services for OIEP.

Recommendation: Section 4 of S. 1398 should be amended to delete clause (2) of section 1126(c) of P.L. 98-561 (25 U.S.C. 2006(c)(2)).

Issue: Section 504(d) of the 1984 amendments added a new section 1126(d) to P.L. 95-561 requiring the Assistant Secretary for Indian Affairs to submit in the annual Budget a plan for "school facilities" to be contructed, for establishing priorities among projects, and for the improvement and repair of "education facilities".

The new provision also requires that local BIA education personnel coodinate with BIA Agency Superintendents for the maintenance of education facilities. Funds appropriated for such maintenance are to be allocated directly to BIA education personnel and may not be used by the BIA Agency Superintendent until the BIA Agency Education Administrator is assured that the necessary maintenance has been, or will be performed in a reasonable manner.

Discussion: Currently the Bureau of Indian Affairs prepares a priority list of new construction projects that is published in the Federal Register and used as the basis for construction dollars in the budget, but BIA does not have a priority list for operation and maintenance funding. The new provision now in section 1126(d) of P.L. 95-561 does not consider other BIA facility needs such as jails, administrative facilities, etc. The centralization of the maintenance activities is more effective than dividing the responsibility. The Administration opposed the new provision because of the cumbersome inefficient procedures required and because it is an undue interference with Executive Branch prerogatives.

Section 4(b) of S.1398 makes a number of amendments including one to paragraph (1) of section 1126(d) which adds "a 5-year plan for capital improvements" to the material to be submitted by the Assistant Secretary in the annual budget for the BIA. The only significant improvement in the amendments to paragraph (2) is to delete the requirement that the Director, OIEP implement the operation and maintenance program for education facilites. Paragraph (2) is also amended to require that the operation and maintenance program include "a system for the conduct of routine preventative maintenance". The bill would delete paragraph (3) which requires the the Director, OIEP "supervise all Bureau education facilites, including local Bureau housing constructed for the purpose of housing Bureau personnel at the school site".

Recommendation: All of the text of section 4(b) of S. 1398 on page 6, line 23 through page 8, line 2 should be deleted and replaced by the word "repealed."

Issue: Section 505(a) of the 1984 amendments added the following new criteria to be considered for funding under the Indian School Equalization Formula (ISEF) for distributing funds appropriated for the operation of schools:
(1) special transportation and other costs of isolated and small schools;
(2) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board;
(3) costs associated with greater lengths of service by educational personnel;
(4) special programs for gifted and talented students; and
(5) costs associated with operating education and recreational programs on a 12-month basis.

Discussion: The five new criteria are additional factors to be considered in establishing the interim ISEF already established under the regulations implementing P.L. 95-561. Since the BIA is currently establishing a new funding procedure to be based on the school standards, it is unlikely that all these factors would be incorporated into the formula. The Administration opposed the fifth criteria because it would provide authority for additional obligations which could cost $15-20 million annually. Section 5(a) of S. 1398 would delete that crieria.

The first new criteria above mostly duplicated a criteria ("isolation of the school") already in the same subsection. The third new criteria is not feasible to implement because of continuous changes in staffs at the schools. The fourth new criteria is premature because such a pilot program is being initiated in the next school year.

Recommendation: Amend section 5(a) of S. 1398 to also strike out the criteria designated (E), (G), and (H) in section 1128(a)(2) of P.L. 95-561 (25 U.S.C. 2008(a)(2)).

Issue: Section 505(b)(2) of the 1984 amendments added a new section 1128(c)(2) to P.L. 95-561 requiring that each BIA and contract schools receive an equal amount of funds for school board training and costs of membership in appropriate organizations.

Discussion: When P.L. 95-561 was first implemented, each of the school boards were given an equal amount ($5,000) for training. Because of our concerns and those of the Appropriations Committees with achieving the best use of the funds, the training is now provided on a national basis through contract. This system has been more cost effective and generally better training has been provided. There is also some concern that funding membership in organizations could be indirectly funding lobbying efforts.

Recommendation: Amend S. 1398 to add a provision striking section 1128(c)(2) of P.L. 95-561 (25 U.S.C. 2008(c)(2)).

Issue: Section 505(b)(3) of the 1984 amendments added a new section 1128(c)(3) to P.L. 95-561 requiring the Secretary to provide indirect costs to contract schools in an amount equal to what it would cost the Secretary to operate the school. ISEF money could not be used to pay indirect costs.

Discussion: Defining and funding indirect costs are Bureauwide problems. This provision essentially only limits the BIA from using ISEF funds to pay indirect costs because the rest of the language is the same as the language in P.L. 93-638. The Administration opposed the amendment because it is unnecessary.

Recommendation: S. 1398 should be amended to add a provision striking section 1128(c)(3) of P.L. 95-561 (25 U.S.C. 2008(c)(3)).

Issue: Section 505(c) of the 1984 amendments added a new section 1128(e) to P.L. 95-561 requiring a separate fund for monetary awards and quality step increases. Payments from this fund would not be allowed to affect school allotments.

Discussion: The Administration opposed this provision arguing that awards and quality step increases are part of salary costs and should be funded the same way. This provision requires that an employee's quality step increase would always be paid from this fund while the rest of the employee's salary would be paid from another fund. This procedure could be a bookkeeping nightmare.

Section 6(b) of S. 1398 would eliminate the current language in section 1128(e) and would substitute "Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

Recommendation: Enact section 6(b) of S. 1398.

Issue: Section 506(a)(1) and (2) of the 1984 amendments added a new section 1129(a)(2) authorizing forward funding of ISEF appropriations.

Discussion: The Administration supported the concept of forward funding and included a forward funding provision in its substitute bill. However, forward funding language in the FY 1985 Appropriation Bill was dropped by the Conferees because of the BIA's change to an earlier count week which addressed most of the concerns expressed by school boards.

Section 6(a)(1) through (4) of S. 1398 would add a new advanced funding authorization option for use "as provided in the appropriation Act". The new provision is undesirable because it requires the allocation of a large amount of funds earlier than necessary and based on prior year data. Further, the provision could be detrimental to schools by requiring the final allocation of funds by a date so early it could preclude the use of accurate student count information for the distribution.

Recommendation: Section 6(a)(1) through (4) of S. 1398 should be striken and replaced by a repeal of section 1129(a)(2) of P.L. 95-561 (25 U.S.C. 2009(a)(2)).

Issue: Section 506(a)(2) of the 1984 amendments also added a new section 1129(a)(3) to P.L. 95-561 authorizing a school supervisor (subject to school board approval) to spend up to 10% of allotted funds for procurement of supplies and equipment with or without competitive bidding.

Discussion: That provision (if implemented) will remove millions of dollars from any system of checks and balances. The potential for waste alone, not to mention fraud and abuse, is extremely high under those conditions.

Section 6(a)(5) and (6) of S. 1398 would amend that provision to make the use subject to "guidelines established by the Assistant Secretary" and to change the 10% of allotted funds to "no more than $25,000 annually". Many small schools have a total purchasing budget of less than $25,000.

Recommendation: Even with the improvements in the amendments in section 6(a)(5) and (6) of S. 1398, we believe that the authority is undesireable as well as unnecessary and we would prefer that section 1129(a)(3) of P.L. 95-561 (25 U.S.C. 2009(a)(3)) be repealed. However, we do not object to S. 1398 because of its failure to repeal the provision.

Issue: Section 506(b) of the 1984 amendments added a sentence to section 1129(c) of P.L. 95-561 requiring the Secretary to have a program to fund tribal divisions of education and to develop tribal education codes.

Discussion: The language of this amendment could be interpreted as an entitlement program thereby potentially funding every tribe; or it could be interpreted as a program based on available funds. The Administration opposed the provision because of the financial impact and because it could be an intrusion on tribal government rights by requiring them to have divisions of education and tribal education codes.

Section 6(b) of S. 1398 amends the provision to make the establishment of tribal divisions of education and the development of tribal education codes eligible subjects for grants under section 104(a) of P.L. 93-638 (25 U.S.C. 450h(a)).

Recommendation: The amendment in S. 1398 alleviates our concerns with the provision. However, it should be noted that the provision as amended by the bill is unnecessary because section 104(a) of P.L. 93-638 already authorizes financial assistance for "the strengthening or improvement of tribal government".

Issue: Section 507 of the 1984 amendments amended sections 1129(b) and 1131(d) of P.L. 95-561 to require that a supervisor's appeal of a local school board's decision must be in writing describing the action and the reason the supervisor believes the decision should be overturned. The school board is to receive a copy of the appeal and have an opportunity to respond.

Discussion: The original appeals process in P.L. 95-561 did not require that everything be in writing, and did not give the school board an opportunity to respond to the appeal in writing. The Administration included this provision in its substitute bill in the 98th Congress. However, since then the same procedures have been incorporated in BIA's regulations now in clearance.

Recommendation: Although the provisions are unnecessary, we do not object to S. 1398 because of its failure to repeal them.

Issue: Section 508 of the 1984 amendments amended section 1132 of P.L. 95-561 so that it now requires the Secretary to have a managment information system for education data within one year of enactment of the Education Amendments of 1984.

Discussion: This amendment changed section 1132 by requiring the information system to be available to OIEP within one year of enactment of the amendment. The Administration opposed this provision on the basis that it required a separate information system for the OIEP. The language of the amendment is not clear on this point. Furthermore, the OIEP has continued to develop and is using a management information system. S. 1398 includes no provision on this subject.

Recommendation: Although the amendments to section 1132 were unnecessary and unclear, we do not object to S. 1398 because of its failure to repeal them.

Issue: Section 509 of the 1984 amendments added a new section 1136(b) to P.L. 95-561 (25 U.S.C. 2016(b)) requiring the Inspector General to insure that financial and compliance audits are conducted of the BIA, the OIEP, and the BIA schools at least once every three years.

Discussion: The Admininstration opposed this provision because the Inspector General has adequate authority to insure that such audits are conducted and that further legislation "is unnecessary and will needlessly complicate and confuse the legal authority of such audits" (quote from testimony of Deputy Assistant Secretary for Indian Affairs (Operations) April 9, 1984, before the House Subcommittee on Elementary, Secondary, and Vocational Education).

Section 7 of S. 1398 would amend the provision to delete the requiremnt for audits of the BIA and the OIEP but not the audits of the BIA schools.

Recommendation: We do not object to S. 1398 because of it failure to completly repeal section 1136(b).

Issue: Section 511 of the 1984 amendments added a new section 1140 to P.L. 95-561 allowing the BIA and OIEP employees to accept volunteer services for Bureau and contract schools.

Discussion: The Administration did not include this provision in its substitute bill in the 98th Congress because there was not time to thoroughly analyze the effect on existing statutory authorities.

Section 8 of S. 1398 amends section 1140 to place the authority in the Secretary and to provide that the volunteers are Federal employees only for purposes of the Federal Tort Claims and Compensation for Work Injuries laws.

Recommendation: Enact section 8 of S. 1398.

Issue: Section 512 of the 1984 amendments added a new section 1141 that allows education personnel to choose to receive their annual salary over a 12-month period instead of a 9 or 10-month period. An employee's choice could change twice a year.

Discussion: BIA has developed a plan to permit a once a year choice to receive pay over a 12 month or a school year period. It was believed that no new authority was needed. However, it now appears that potential conflicts with the duals compensation and unemployment compensation laws should be addressed. S. 1398 includes no provision on this subject.

Recommendation: S. 1398 should be amended to include a provision that an current or former employee's receipt of defered or delayed income under section 1141 after the school year end or while in a furlough status shall not be a basis for (1) a violation of the dual compensation law (5 U.S.C. 5533), or (2) denying or reducing any unemployment compensation benefits or any other Federal or Federally assisted program benefits. In addition, to avoid a conflict with other Federal personnel laws, we recommend that section 5541 of title 5, U.S. Code be amended by adding at the end a new item as follows: "employees whose pay is prorated under section 1141 (or 1140A if redesignated by S. 1398) of the Education Amendments of 1978, as amended (25 U.S.C. 2021)."

Issue: Section 512 also added a new section 1142 to P.L. 95-561 requiring the Secretary to pay Bureau employees previously agreed upon stipends for extra work in lieu of overtime or other premium pay. A stipend shall be paid as a supplemental to the employee's base pay. The amount of the stipends are to be determined at the area level.

Discussion: A stipend has advantages for both the employees and the BIA. Employees may be more willing to take on extracurricular activities if they are assured of a specific amount of compensation ahead of time. School budgets can be better planned and overtime costs avoided.

Section 9(b) of S. 1398 amends the provision to permit rather than require the stipends. It also deletes the provision about determining the amounts at the area level but provides that stipends may be provided "for each Bureau area".

Recommendation: Amend section 9(b) of S. 1398 to require that the stipend amounts be not more than those in the public schools of the state where the BIA school involved is located.

Issue: Section 512 also added a new section 1143 to P.L. 95-561 requiring proceeds from employee housing rents to be used for improvement and repair of employees quarters and giving local BIA school supervisors authority to waive up to 90% of rental fees. Also, no rent is payable by educators in a non-pay status while school is not in session.

Discussion: The Administration strongly opposed the provision because of (1) the potential multi-million dollar annual cost, and (2) its discrimination against other educators not living in BIA employee housing and other Federal employees in general. (Also see the main part of this statement.) Section 9(c) of S. 1398 would reduce the 90% to 40% and limit the discretionary waivers to "isolated" schools. It would also change the "non-pay status" waiver to apply to those "in involuntary non-pay status and who have not obtained employment". It would be possible for an educator to receive unemployment compensation or welfare benefits and not have to pay rent.

Recommendation: S. 1398 should be amended to repeal section 1143 of P.L. 93-561 (25 U.S.C. 2023).

Senator ABDNOR. The next group is a panel, and a gentleman I am very happy to have here from South Dakota—I am a bit parochial—Roger Bordeaux, who is executive director of the Association of Contract Tribal Schools, will be here; Carmen Cornelius Taylor, executive director from Albuquerque, NM, with the National Indian School Board Association; and Elmer Savilla, who is executive director of the National Tribal Chairmen's Association in Washington, DC.

Roger, I've just got to make this statement: Last week we had a group of Indian students who were in here, who were tremendously outstanding. They had won, on a national award, they had—what did they win?—5 out of 12 recognized scholars, 5 of them were from our schools in South Dakota, which is quite a record.

Well, Carmen, I suppose we should start out with ladies first, even though I am being prejudiced with South Dakota. We'll call on you first.

STATEMENT OF CARMEN CORNELIUS TAYLOR, PROGRAM DIRECTOR, NATIONAL INDIAN SCHOOL BOARD ASSOCIATION, ALBUQUERQUE, NM

Ms. TAYLOR. Thank you, Mr. Chairman.

I appear today on behalf of the National Indian School Board Association. This organization represents Bureau-operated as well as tribal contract schools from around the country. Our primary purpose is to provide technical assistance and advocacy for school boards throughout the country. I might mention to you, Mr. Chairman, we do have member schools in South Dakota.

Our board of directors took action last year in support of the original 98-511. We were not particularly pleased, nor did we think that it was necessary to have a moratorium placed on that piece of legislation. However, we are in support of the technical amendments, the Indian Education Technical Amendments of 1985, and I would like to just hit on a couple of points. We are in support and do recommend passage of these amendments but we feel like in a couple of places there might be some need for clarification.

In section 2(d), which regards closures consolidations, and curtailment, the bill authorizes school closures when plant conditions constitute an immediate hazard to health and safety. While we agree that children should not be in schools where there is an immediate hazard to health and safety, we do feel like maybe there needs to be some clarification that this applies to permanent closures due to health and safety factors. The Bureau has, over the years, sort of neglected the area of school facilities improvement, and we feel like they should not be able to use this as an excuse for permanent closures, so we would like some clarification on that point.

On section 3, school boundaries, our association appreciates the efforts of the committee to provide a method by which tribes may petition the Secretary for alternatives to the boundaries which are being proposed by BIA. We have just a couple of concerns about this section. Maybe it has more to do with the BIA proposing their proposed boundaries than it does with this section specifically, but we would hope that the BIA will be publishing and circulating their proposed regulations to school boards and tribal governments for review and comment.

In section 4, Bureau of Indian Affairs education functions, we definitely support the inclusion of a 5-year plan for capital improvement and the inclusion of the clause for routine preventative maintenance. That will help eliminate some of the problems that we have with health and safety factors which have led to some school closures.

We still do believe that the custodial function should be separated from facility maintenance and placed under the supervision and control of education. It's our belief that school principals should be able to direct the kind of janitorial services that go on in their schools. We also believe that the planning function for BIA school facilities should be placed under the direction of education, so that facility plans will reflect education priorities and be consistent with each school's program needs. We have attached some suggested language that might help eliminate any problems of delegations of authority in this particular area.

In section 6, the uniform direct funding and support, we are still very much in support of forward funding. Schools still, even though the Bureau has set an earlier count week, schools are still not getting their final allotments until January or February, and school is midyear by then.

One section, itself could be interpreted to impose a ceiling on procurement for supplies and equipment. We would just like to make sure that it made clear that the $25,000 figure that is in that section applies to procurements without competitive bidding and doesn't limit the purchase of supplies and equipment through normal procurement methods.

Section 5 in the allotment formula, although we have no particular problem with the elimination of the letter "i", which required the consideration of summer programs as a new and separate factor for inclusion in the funding formula, we are somewhat concerned about present attempts by BIA to control summer school programs in the current budgets as acted upon by school boards.

Section 8, voluntary services, we support the intent of this clause but we have some question about whether or not the function will have to be specifically delegated from the Secretary to the appropriate education officials in the field. That sometimes is a difficult process.

We would just like to thank you and the committee and the staff of this committee for the efforts they have put into drafting these technical amendments, and thank you for giving us an opportunity to present our views.

[Ms. Taylor's prepared statement, with attachment, on behalf of the National Indian School Board Association, follows:]

TESTIMONY
NATIONAL INDIAN SCHOOL BOARD ASSOCIATION
S. 1398
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
HEARING
PRESENTED BY
CARMEN CORNELIUS TAYLOR
JULY 17, 1985

Mr. Chairman and Members of the Committee:

I appear today on behalf of the National Indian School Board Association. This organization has both Bureau-operated and Tribal Contract Schools as members. The primary purpose of the organization is to provide a networking mechanism for local boards and to provide advocacy for implementing the Congressionally-mandated policy of Indian control in all matters related to Indian education. This policy was explicitly stated in Public Law 95-561, the Education Amendments of 1978. S. 1398 is intended to amend the Education Amendments of 1984 -- with those amendments provided to strengthen that policy of Indian control previously stated.

The National Indian School Board Association testified in support of the 1984 amendments because the intent was to strengthen the Indian control policy and did not support the moratorium placed during the FY 1985 Appropriations. Likewise, NISBA supports the provisions of S. 1398, and believe that these technical amendments -- if adopted -- will improve the operation of the Bureau of Indian Affairs school system. There are provisions, however, which we believe require clarification.

1. Section 2(d) -- Closures, Consolidations, and Curtailment. Section 2 of the Bill authorizes school closures when plant conditions constitute an immediate hazard to health and safety. The often times inadequate level of facility maintenance has -- over an extended period of time -- amounted to neglect of numerous facilities. The BIA should not be permitted to use health and safety factors as an "excuse" for permanent closures. NISBA

believes it is essential that the technical amendments of 1985 reaffirm the statutory obligation to maintain all school facilities in compliance with applicable health and safety standards.

2. Section 3 — School Boundaries. NISBA appreciates the efforts of the Committee to provide a method by which tribes may petition the Secretary for alternatives to the boundaries which are being proposed by BIA. It is our hope that since this section essentially accepts that the BIA is going to implement boundaries, that the Congress will make certain that BIA is required to publish and circulate their proposed regulations to school boards and tribal governments for review and comment.

The other area of concern regarding boundaries has to do with specialized curriculum or programs offered by various schools or dormitories that are unique. In these situations, geographical boundaries should not be the only consideration.

3. Section 4 -- Bureau of Indian Affairs Education Functions. We support the inclusion of a five-year plan for capital improvement and the inclusion of the clause for routine preventative maintenance. However, there is still a lack of clarity with regard to OIEP responsibility for school facilities. We have attached suggested language for this section.

We still believe that the custodial function should be separated from facility maintenance and placed under the supervision and control of education. Local school principals ought to be placed in a position where they can direct appropriate cleaning of their school facilities. We also believe that the function of planning for BIA school facilities should be placed under the direction of education so that facility plans will reflect education priorities and be consistent with each school's education program needs.

4. Section 6 — Uniform Direct Funding and Support. Although advance

funding of education programs is preferable to the present current year funding process, NISBA more fully supports the original provision for forward funding. Carryover authority is most certainly a positive step. Section 2(B)(6) — we believe -- unintentionally imposes a ceiling on procurement for supplies and equipment. The Bill needs to make it clear that the $25,000 figure applies to procurements without competitive bidding and does not limit purchase of supplies and equipment through normal procurement methods. With this slight change in language, one of the most serious problems in the Bureau-operated schools would be resolved.

5. Section 5 -- Allotment Formula. Although we have no particular problem with the elimination of letter (I) which required the consideration of summer programs for inclusion as a new and separate factor for inclusion in the formula, we are concerned about present attempts by the BIA to control summer school programs even if the school boards have planned for them within their current ISEP allocations.

6. Section 8 — Voluntary Services. We support the intent of this clause but question that the function will have to be specifically delegated from the Secretary to the appropriate education officials in the field. Delegations of Authority have often been difficult when depending on the bureaucracy to assure their implementation.

The National Indian School Board Association appreciates the efforts which have been put into drafting these amendments and thank you for giving us the opportunity to present our views.

ATTACHMENT:

Section 2006(b). The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with the provision of education services by the Bureau including (but not limited to) school custodial personnel, and all personnel engaged in the planning of school facilities. Nothing in this Act shall be construed to require the provision of separate support services for Indian education with respect to contracts, personnel or facility maintenance.

(c) The Assistant Secretary shall submit in the annual Budget a plan -

(1) for school facilities to be constructed under the system required by Sec. 2005(c) of this Title;

(2) for establishing priorities among projects and for the improvement and repair of education facilities, which together shall form the basis of the distribution of appropriated funds; and

(3) including a 5-year plan for special improvements.

(d) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall include, but not be limited to -

(1) a method of computing the amount necessary for each education facility;

(2) similar treatment of all Bureau and contract schools;

(3) a system for the conduct of routine preventive maintenance.

The agency superintendents for education, or the area education program administrator in the case of multitribal boarding schools located off reservation, after consultation with appropriate local school boards, shall make arrangements for the maintenance of education facilities with the supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. No operation and maintenance funds may be expended or authorized for expenditure by an agency superintendent or area director for the maintenance and operation of educational facilities until written approval to be issued on a quarterly basis of a maintenance and operation plan is given by the agency superintendent for education or by an area education program administrator, after consultation with the appropriate local school board. Approval by the agency superintendent for education or by an area education program administrator shall be given only when there is assurance that necessary maintenance has been, or will be, provided in a reasonable manner.

Senator ABDNOR. Thank you, Carmen, for your statement and your recommendations. I understand you have been in contact and talked to Mr. Mahsetky, and we are happy to hear things are working out nicely.

For our next witness we are happy to have with us Roger Bordeaux. Welcome to Washington, Roger.

STATEMENT OF ROGER BORDEAUX, EXECUTIVE DIRECTOR, ASSOCIATION OF CONTRACT TRIBAL SCHOOLS

Mr. BORDEAUX. Thank you.

I think I only would like to comment just on one section, since you already have the written testimony. Basically it is section 2(b) (1), (2), and (3), which deals particularly with the tribally controlled schools. Sections (1) and (2) deal primarily with requiring tribal schools to be accredited or to meet some types of standards.

I think we do, think all the schools support some type of academic standards and other types of standards, but I think the option should be left open so that the tribes can determine what types of standards they want to follow. As long as the technical amendments and what exists already in 98-511 are interpreted that way by the administration and maybe in some report language, you know, we don't have any serious problems with it.

Then under section 2(b)(3), regarding reporting and accounting procedures, I would like to recommend one change in there. You can just see what happens to it. Currently, it says that the technical amendment would change it so that, instead of having the Bureau require them to seek a contract with an Indian organization, it is saying that they can do that. What I would like to do is continue on with that sentence and strike out the section in 511 which currently says, "a consistent system of uniform physical control and fund accounting procedures," take those last four or five words out of there and insert "uniform physical reporting procedures" as opposed to accounting systems.

I think the primary reason for that is what already exists in 638 in regard to having a certified accounting system. All the contractors have to have them. They have to have an audit at least once every 2 years, which has been reported to the Bureau by, I would say, about 100 percent of the schools, so there already exists a certified accounting system and an auditing procedure through 638. I think what the intent of this legislation was to do, was to make sure that the reporting system back to Congress and to the Bureau was more or less uniform, and not necessarily uniform accounting.

Senator ABDNOR. That's probably a very fine recommendation. I hope you will take the opportunity to visit with Mr. Mahsetky before you leave here today. There is obviously some technical work that needs to be done, rather than a quick——

Mr. BORDEAUX. Otherwise, everything else in the technical amendments, I know a lot of people have put a lot of time into it, not only congressional staff but some people out in the field, and we have able to get a lot of cooperation from everybody, and I think we have been able to come up with something that does improve the delivery of services to Indian students through the Bureau.

Thank you.

Senator **Abdnor**. Well, thank you. We are extremely pleased for that testimony. That's very helpful. I'm sure the staff appreciates it, too. You have come a long way but we thank you very much.

Mr. **Bordeaux**. Thank you.

[Mr. Bordeaux' prepared statement, on behalf of the Association of Contract Tribal Schools, follows:]

Prepared Statement of Roger Bordeaux, Executive Director, Association of Contract Tribal Schools

My name is Roger Bordeaux. I am here on behalf of the Association of Contract Tribal Schools. The Association of Contract Tribal Schools currently has a membership of approximately 50% of the tribal schools which contract with the Bureau of Indian Affairs thru PL 93-638. The Association of Contract Tribal Schools' primary purpose is to provide Advocacy, Communication Training and Technical Services to its member schools and other schools that are striving for local control of Indian Education at the elementary and secondary level.

We are here today to provide comments on the proposed Indian Education Technical Amendments Act of 1985. These Technical Amendments would amend Title V of PL 98-511 The Education Amendment Act of 1984 which amended Title XI of PL 95-561 the Education Amendment Act of 1978. The key to PL 95-561 was stated in Section 1130 Policy for Indian Control of Indian Education. This section stated that "it should be the policy of the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education."

PL 98-511 Title V was intended to strengthen PL 95-561, Title XI. Because the administration opposed Title V of PL 98-511 and the Senate Appropriations Committee felt that some of the sections in Title V were unnecessary a moratorium was placed on the implementation for FY 85 through the Interior Appropriations Act of 1985. This moratorium was unnecessary. Although we had some problems with PL 98-511, we felt that as a whole it would strengthen local control of Indian Education. The simplest thing for this committee to have done would have been to request the Appropriations Committees to lift the moratorium for FY 1986. The House Subcommittee on Interior and Related Agencies Appropriations has already requested that the moratorium be lifted in their recent markup for FY 1986.

The Technical Amendments of 1985 will hopefully strengthen Congressionally mandated, Bureau policy concerning local control not only stated in PL 95-561 but also in PL 93-638. It must not infringe on tribal rights in existence under PL 93-638. Specifically the rights of tribes to contract education programs based on tribal needs and desires, and not Federal domination through laws, rules, regulations, guidelines, and directives.

I would like to review just 3 sections of the Technical Amendments which will directly effect contract tribal schools and reasons why the Technical Amendments are not needed or need clarification.

SECTION 2(b)(1)

PL 93-638 currently has declination regulations (271.14) which can be used by the BIA to refuse to contract with a tribe or tribal organization. A PL 93-638 contract must include; (271.14(i)) a statement of goals and objectives, the organization methods and procedures to meet the goals and objectives, a budget, a staffing plan, an evaluation criteria and control systems, a tribes statement of substantive knowledge, a personnel system and position description of key personnel, a certification of the accounting and bookkeeping procedures, a property and recordkeeping system along with a few other minor statements.

The above requirements to contract for education services seems to be more than enough to insure a quality education program.

The Association of Contract Tribal Schools does believe that academic standards must be available for tribal schools but the type of standards must come from the local people (tribes) and not from the federal or state government. The standards criteria must include community or tribal standards.

SECTION 2(b)(2)

PL 93-638 currently requires a certified accounting system (271.14(m)) and a record keeping system if a tribe or tribal organization wishes to contract for education services.

PL 93-638 currently requires that a tribe or tribal organization file reports (271.14(r), 271.47 and 271.49).

This section is not required but if passed must insure that the uniform accounting and reporting be user sensitive.

SECTION 6(a)(4)

This section is not necessary. The forward funding language in PL 98-511 is sufficient. It will be up to the Appropriations Committees to determine when it will be feasible to forward fund BIA Education just like they do with the majority of the other Federal Education programs.

The rest of the Technical Amendments do not effect the contract tribal schools as much as the aforementioned.

We realize there are times for compromise and change within the current political structure. Title V of PL 98-511 was not even given a chance to improve the delivery of BIA education services. Title V should have been given a few years to try as opposed to the existing moratorium on the proposed Technical Amendments.

I personally commend the Congressional staff who worked on the Technical Amendments. Their time and effort shows a concern for Indian children in the BIA funded schools. I hope that if the Technical Amendments become law they will be user sensitive. After all these amendments will provide the framework from which the BIA Education staff will hopefully facilitate the current Federal Policies in PL 93-638 and PL 95-561 concerning local control in all matters relating to education.

In closing, I would like to thank the Senate Select Committee and all Congressional staff who worked on these Technical Amendments and hope to continue a working relationship for the betterment of BIA education service delivery to elementary and secondary Indian children.

Senator ABDNOR. At this point in the hearing record I would like to have inserted the testimony of Mr. Elmer M. Savilla, the executive director of the National Tribal Chairmen's Association, who was scheduled to appear.

[Mr. Savilla's statement follows:]

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 420 818 - 18th St. N.W. Washington, D.C. 20006
(202) 293-0031

TESTIMONY TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 1398, TO AMEND TITLE XI OF THE EDUCATION AMENDMENTS OF 1978, RELATING TO INDIAN EDUCATION PROGRAMS.

July 17, 1985

Good Morning, Mr. Chairman, and members of this important Committee. The National Tribal Chairmen's Association does appreciate this opportunity to provide testimony and information on American Indian tribal views on Indian education programs.

My name is Elmer M. Savilla. I am the Executive Director of the Association.

This organization has met in conference several times during 1984 and again in late April of 1985, and has thoroughly discussed the issue of Indian education improvements. It is appropriate then for me to present to the Committee the April 1985 position paper on Indian education which was developed and approved by the tribal leadership in convention.

NTCA Resolution No. 85-12 with the attached NTCA Education Policy contains the views which is believed to address the necessary priority issues in order to maintain a quality education for the youngsters in Indian Country. Those policy positions are numbered I through XV. I would be happy to discuss those policies with you, if you wish, but I believe that our NTCA Education Committee developed a paper which is succinct in content and comprehensive in coverage.

Therefore, I submit the package which contains the Resolution and attached NTCA Education Policy, 1985, for your review and study, and your consideration.

Thank you again for this opportunity. The National Tribal Chairmen's Association stands ready to assist this Committee in addressing these important issues.

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 420 818 18th Street N.W. Washington, D.C. 20006

(202)293-0031

RESOLUTION

NTCA No. 85-12

A RESOLUTION IN SUPPORT OF THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION EXECUTIVE DIRECTOR'S OFFICE ON BEHALF OF THE NTCA ADVISORY COMMITTEE ON EDUCATION

WHEREAS: The National Tribal Chairmen's Association Advisory Committee on Education has met throughout the nation in consultation with various tribes and Indian education organizations in an effort to formulate a guiding policy direction for improvements in education programs for Indian children,

NOW THEREFORE BE IT RESOLVED, that the National Tribal Chairmen's Association adopt the following policy positions in regard to tribal education programs and support the Executive Director's office in raising funding to enable the NTCA Advisory Committee on Education to meet quarterly and to attend consultation meetings in Washington, D.C. and field-based hearings on education, and to prepare and distribute an education bulletin of information on a monthly basis to NTCA member tribes.

CERTIFICATION

The foregoing Resolution was duly adopted by the Board of Directors and the membership of the National Tribal Chairmen's Association at it's duly constituted Convention in Miami, Florida on this 18th day of April, 1985, at which time a quorum was present.

Signed: ______________________
Richard LaFromboise
President, NTCA

Attest: Robert Youngdeer
Robert Youngdeer
Secretary, NTCA

I. JOHNSON-O'MALLEY: The U.S. Congress must restore the Johnson-O'Malley education programs for FY 1986 in the amount of $29,987,000 which includes $1,130,000 to serve 9,500 tribal students who are enrolled in Tribal Contract Schools. The Johnson-O'Malley programs are cost effective, they promote tribal control of education, and they are responsive to the needs of tribal children who are most in need, children who live on or near Indian reservations. The Johnson-O'Malley program is located under the authority of the Snyder Act and should not be subject to the cutting ax whim of the Administration. The N.T.C.A. views the proposed abolishment of the time-tested and successful JOM programs as a revival of the termination policies of the early 1950's. This pattern of termination is evident in the recent closing of federal boarding schools in Oklahoma, Utah, and Arizona, the massive transfer of BIA schools to the State of Alaska, the drastic cutback in Indian scholarships, continuous attempts to transfer tribal students to white public schools, the refusal to implement the 27 BIA Education Policies (25 CFR 32), the refusal to permit tribal contract schools to utilize JOM monies, and the Administration's refusal to recognize that education is an essential component of the federally recognized tribes. N.T.C.A. vigorously objects to the Administration's plan to force the tribes to limit their use exclusively to Impact Aid and Title IV-A of the Indian Education Act, as these are two programs which tribes cannot contract for. Both Impact Aid and Title IV-A are primarily controlled by public school districts, for the most part which are not controlled by Indian tribes nor people.

II. INDIRECT COST LINE ITEM: The U.S. Congress must restore the separate line item in the Bureau of Indian Affairs education budgets in order to ensure that administrative cost funds remain a distinctive fiscal component which support the tribal administration of B.I.A. contracted schools, JOM, higher education, and other programs.

III. INDIAN EDUCATION ACT (TITLE IV): The U.S. Congress must provide measures to place the Part A category of Title IV under a grant authority to Indian tribes. As it stands now, Title IV-A funds (with a minor exception in entitlement funds to 60+ tribal contract schools), which compose almost 2/3 of all the Title IV budget, are used exclusively by public schools which enroll Indian students. The great majority of federally recognized tribes cannot participate in the Title IV-A program, yet nearly 2/3 of the budget is located in that section. The Office of Indian Education (OIE) in the U.S. Department of Education should make better use of its Title IV-B Indian Fellowship Program. The N.T.C.A. is disturbed that OIE returned $168,000 of Indian Fellowship Program funds to the U.S. Treasury at the end of the FY 1983-84 and that $61,000 has been returned to date during the FY 1984-85. In light of the large number of tribal students who are being denied B.I.A. Scholarship Assistance, the O.I.E. must use its fellowship funds more effectively and/or re-obligate available monies.

IV. P.L. 98-511 IMPLEMENTATION: The U.S. Congress must allocate funding to compel the Bureau of Indian Affairs to implement the provisions under P.L. 98-511. The B.I.A. has stated that they will not request funds to do so and have provided no sound rationale. Most of the provisions require only staff time and committment to develop the following: NTCA demands that the BIA immediately implement with NTCA Consultation, the following: 1) forward funding, 2) I.S.E.P. revisions, 3) restrictions on school closures, 4) procedures for establishing school boundaries, 5) control of facility maintenance funds by Agency Superintendents for Education, 6) control of B.I.A. education facilities by B.I.A./OIEP, 7) separate funding for B.I.A. school board training and Indian School Board associations, 8) detailed provisions for appeals from actions of Indian school boards, 9) proration of pay and stipends for B.I.A. employees who perform overtime work, and 10) authority for Agency Superintendents for Education to waive up to 90% of the rental rate for educators at B.I.A. schools subject to school board approval.

V. B.I.A. EDUCATION ADVISORY BOARD: The N.T.C.A. resolved at its 1984 annual convention that the B.I.A. Office for Indian Education Programs should consult with the N.T.C.A. Advisory Committee on Education and a representative of the National Congress of American Indians at least four times annually in order to carry out the B.I.A.'s responsibility for consultation as described in 25 CFR 32. The B.I.A./OIEP must be restrained from revising the twenty-seven B.I.A. education policies without tribal consultation.

VI. SENATE SELECT HEARINGS: The N.T.C.A. urges the Senate Select Committee on Indian Affairs to establish as soon as possible the meeting dates and locations (near Indian reservations) for the three remaining oversight hearings on B.I.A. and Title IV, which are required before May 15, 1985. The N.T.C.A. Advisory Committee on Education should prepare testimony that reasserts the most recent N.T.C.A. posiiton on Title IV and BIA education issues.

VII. VOCATIONAL EDUCATION SET ASIDE: Two parts of the rules and regulations for the Indian and Native Program Section 103 (b) (1) (c) of the Carl Perkins Act (PL 98-524) cause NTCA concern: (1) the 65% placement requirement and (2) the requirement for private sector involvement in the operation of the project. Regarding the 65% requirement, no other population has such restrictive requirements. The 65% requirement should be a commendable goal - not a requirement. The required private sector involvement is in opposition to the Congressional mandate of Self Determination. The private sector should not operate but should support vocational education programs.

VIII. B.I.A. TRIBAL CONTRACT SCHOOLS: The N.T.C.A. requests that the B.I.A. moritorium on the contracting of new tribal schools under the authority of P.L. 93-638 be lifted. N.T.C.A. believes that this action is in violation of the law and the intent of the U.S. Congress. Many tribal children, such as those of the Tiospa Zina School on the Lake Traverse Reservation in South Dakota, will be scholastically impeded through the denial of B.I.A. funding unless the moritorium is lifted.

The Administration's attempted decrease of $473,000 for school board training must be prevented. New school board members are elected each year and have a continuous need for training in the complexities of school policy decision-making and guidance.

The N.T.C.A. requests that planning, design, and construction funds be made available for B.I.A. and Tribal Contract Schools, which have been identified in the B.I.A. School Construction program. There exists a major backlog of facility improvement needs to bring B.I.A. and Tribal Contract Schools into compliance with minimum health and safety standards; a condition which appears to reflect a governmental indifference to the safety of Indian children.

IX. B.I.A. HIGHER EDUCATION: The N.T.C.A. asserts that education is a trust responsibility of the federal government and that B.I.A. higher education scholarships should be an entitlement. An additional appropriation of $24 million should be provided to support the 6,000 tribal students who were denied B.I.A. assistance. During FY 1985 only 13,700 undergraduates and 300 graduate students were funded, while 6,000 Indian students who were accepted to universities were rejected from B.I.A. scholarships because of insufficient funds.

We are concerned that there is confusing information about the number of students who are preparing themselves to meet the tribes' great need for college prepared professionals.
In May of 1984 the National Center For Education Statistics stated there were 87,000 persons in college that self identified as "Native Americans
We are at a loss to understand who these extra 73,000 self identified students may be. We believe these 73,000 students must not be confused with the 14,000 federally recognized Indian students now in college and who are in need of full college support, plus the 6,000 eligible students who are not now funded.

X. TRIBALLY CONTROLLED COLLEGES: NTCA supports a 10.6 million appropriation to meet operational costs for these colleges that have an increased student enrollment of 67% while appropriations have declined by 20% since 1981.

We would also encourage the Committee to fund the new endowment provision which was included in P.L. 98-192. The anticipated need as projected by the tribal colleges for FY '86 is $1.5 million.

XI. BIA SPECIAL INDIAN GRADUATE PROGRAM. The NTCA membership, recognizing the critical need for Indian graduate education, urges increased and multi-year funding for the American Indian Scholarship (AIS) of Albuquerque, New Mexico. We urge an allocation of $978,000 for FY '86, and an allowance for contract support funds administered by AIS. NTCA is distressed that 46 potential graduate students are on the AIS waiting list and are not funded because of an insufficient allocation.

XII. TITLE IV-OIE INDIAN FELLOWSHIP PROGRAM: Given the large number of students denied scholarship funds by the BIA, the OIE-Education Department needs to make better use of its fellowship funds. We are dismayed that at the end of the academic year 83-84, the OIE fellowship program returned $168,000 to the Treasury, and that this year to date, they have returned $61,000. The OIE should use its funding throughout the academic year or re-obligate available funds.

XIII. INMED: NTCA supports the 23 member tribally-appointed Advisory Board's request that INMED remain a line item in the Indian Health Service budget. INMED's retention rate of 80% for pre-professional students and 95% for professional students is impressive. NTCA strongly supports an extension of the 4 year maximum eligibility limit for scholarships for health profession students. We recommend that H.R. 1426, Section 104 (a) and (b), the Indian Health Scholarships, should be clearly revised to allow Indian students who receive IHS Scholarships eligibility to participate in other student financial aids programs offered through HHS, Department of Education and the Bureau of Indain Affairs. The current practice limits such IHS scholarship recipients to only IHS scholarships. This existing policy/rule may deter students from making applications to any resource and may cause students not to complete their studies given skyrocketing tuition and other costs.

NTCA also encourages that IHS be responsive to those health-related fields of study that tribes have determined to be of high priority.

XIV. HASKELL INDIAN JUNIOR COLLEGE: The NTCA again demands, under the authority of the Snyder Act, that the $1,000,000. cut since the beginning of the Reagan Administration be restored; that additional funds be appropriated to enable Haskell to become a four-year institution; that the governance of the college be by an intertribal board of regents selected by the tribes; and, that all members of the federally recognized tribes must be forever exempt from paying tuition at attend Haskell.

XV. GIFTED AND TALENTED PROGRAMS: The BIA should request $50,000 each for at least 12 tribes to begin gifted and talent programs. The ISEP formula should include 1.0 as a W.S.U. for these programs. Contrary to the BIA's estimates, there may be at least 10,000 gifted and talented Indian children - yet only 75 have been identified. Tribes rather than the BIA must develop appropriate criteria for the identification of these children.

Senator ABDNOR. Now, I hope you will excuse me. I think I've got to dash to my next meeting.

Mr. TAYLOR [presiding]. Our next panel of witnesses is Vern Duus, program director of the Navajo Area School Board Association, Window Rock, AZ; Eric Eberhard, deputy director, and Alice Luna, staff assistant, Navajo Division of Education; and Bruce Hoffman, representing the Association of Navajo Community Controlled Schools.

I would like to assure each of you that your written testimony will be entered into the record in full, and I would urge that you summarize your statements. I'm not sure which one of you want to go first.

STATEMENT OF VERN DUUS, PROGRAM DIRECTOR, NAVAJO AREA SCHOOL BOARD ASSOCIATION, WINDOW ROCK, AZ

Mr. DUUS. Thank you, Mr. Chairman. My name is Vern Duus. I am here on behalf of the Navajo Area School Board Association. The association represents some 60 school boards, and at last count I think we were at 354 local school board members. The association is currently having a reservationwide conference out on the Navajo reservation, Leupp, AZ, and we are expecting support in the form of a resolution for the technical amendments, probably this afternoon.

The association has been supportive of these amendments, the amendments of 1984 and also these amendments, which we recognize are somewhat in the form of a compromise between various political forces. We want to emphasize a couple of points where we feel that there are some language problems in the legislation.

The first one is—it has been mentioned before, I want to just repeat it for the sake of emphasis—in the closures and curtailment of programs sections. It does allow this closure based on health and safety reasons. On Navajo, out of some 70 schools, we feel that somewhat just a little less than a third, maybe about 20 schools, could, in fact, be regarded as safety problems. We would like the language added to emphasis that closures based on health and safety would be strictly temporary: The closure would only continue as long as it took to fix the facility back to a safe state again.

A second language change appears in section 6, which seeks—the intent of the section is—to allow schools, school boards, to spend up to $25,000 to purchase supplies and equipment. As it is written, however, we feel it definitely imposes a limit on what schools can expend for supplies and equipment, and in many cases $25,000 would be very inadequate. I think a very simple language change there would remedy the situation.

Finally, I want to talk about a problem that is somewhat—I think it is unique on Navajo. That is the school boundaries issues. Some of this is rather complicated, and it is based on the timing that things occurred. It was in September 1984 that the Bureau sent a letter to Chairman Peterson Zah saying that boundaries were now established on Navajo, and here were the maps, you know, to establish those boundaries. That occurred after the school year had begun and, as a result, boundaries were not implemented. Kids weren't taken out of one school and put into another school, so last year school boundaries were not implemented, even though in September they were to be officially established.

In October of that year the Education Amendments of 1984 passed, and those amendments gave tribes a year of grace before the boundaries would go into effect. So, the Navajo Tribe established a task force to develop a boundary system that would take into account all schools operated on the reservation, including public schools, contract schools, and Bureau schools—all public-funded education. We are in the process of working on that—I am a task force member—but we are not in a situation where that is going to be complete by any means by the coming school year, which is now only about a month away. There is an extensive amount of work because agreements have to be reached with three different States and with the Bureau. It's a very large undertaking.

The Technical Amendments of 1985, now would have the effect of withdrawing that year of grace, even though it allows the tribes on a continuing basis to petition the Secretary to establish a boundary system. We're not sure how that is going to affect Navajo for the coming year, and we would like some special consideration.

One thing that occurred between the Education Amendments of 1984 and the Education Amendments of 1985 is that contract schools were eliminated from the system. The Bureau boundaries, in other words, were not going to include them. On Navajo we feel like that is not desirable. I think most of the contract schools agree with that. Most of them are community schools and they want their boundaries just like the rest of the Bureau schools. They don't want Bureau schools coming in and taking kids out of their communities.

That concludes my specific remarks. We have submitted written testimony. Thank you for this opportunity to appear before the committee.

[Mr. Duus' prepared statement, on behalf of the Navajo Area School Board Association, follows:]

PREPARED STATEMENT OF VERN DUUS, PROGRAM DIRECTOR, NAVAJO AREA SCHOOL BOARD ASSOCIATION, WINDOW ROCK, AZ

The testimony of the Navajo Area School Board Association concerning H.R. 2908 and S. 1398 will consist of both comments and questions. There are cases where what we understand to be the intent of the drafters does not seem to jive with the proposed statute. There are other cases where we simply cannot determine what the effect of the proposed language will be. Overall we are very supportive of the proposed legislation. Report language can do much to clarify certain points but in some cases minor changes in the statutory language may be necessary.

Section 2(a) -- Establishment of Standards

We are still supportive of the language which requires alternative standards in the event that a tribe or school board wishes to waive Bureau academic standards. Since there are still no Bureau standards in effect, the question is still largely academic.

Section 2(b)(1)(2)(3) -- Implementation of Standards

These language changes were necessary and we have no problem with them.

Section 2(c) -- Personnel Actions

We support the omission of this sentence since we agree that it was not necessary.

Section 2(d) -- Closing, Consolidation, and Curtailment

NASBA strongly supports the closure provision of the Educational

Amendments. We support the clarification language which has been included and support the additional requirement that closures can apply when "required by plant conditions which constitute an immediate hazard to health and safety." We are a bit concerned, however, that the statement here is too broad and might be abused since many facilities on Navajo could be viewed as constituting such a hazard. We are involved in litigation on this very point where the Bureau closed a facility due to safety reasons which were caused in the first place by inadequate maintenance. Closures for reasons of health and safety should be strictly temporary and only for the purpose of making repairs. In the event that such a closure would result in a permanent closure, then the procedures specified in the act should be implemented.

If this clarification can be made in report language, that would be fine; if not, we would support a language change in the proposed legislation. There may need to be some clarification of what differentiates school closures, consolidation and substantial curtailment. We are currently experiencing semantics games in the Navajo Area where obvious closures are being labeled as consolidation or program adjustments. Actual closures should perhaps be handled differently than consolidations.

Section 3 -- School Boundaries

There is some ambiguity and confusion with respect to what this section combined with Section 1124 of the S. 2496 conference report accomplishes. The ambiguity focuses on the word "separate" as used in Section 1124(a). Does "separate" in this context in fact mean exclusive or does it simply mean that each school will have a specified attendance area? In cases of differing school programs and the presence of day schools and boarding schools, exclusive attendance areas are not supported by NASBA.

We believe it is very important for policy makers at various levels to understand that boundaries must exist within some sort of system. This realization is not stated in Section 1124 nor the new proposed amendments. We do support the handling of revisions and establishment of boundaries and the continuing tribal opportunities to involve itself in the process.

We believe that there is something of a misconception with regard to what has happened heretofore on boundaries. On Navajo, Bureau boundaries have not actually been implemented. A finalization of boundaries was sent to the Chairman of the Navajo Tribe after the 84-85 school year had begun. Since school had begun, boundaries were not enforced due to the disruption of students which would have occurred. Then 98-511 was signed into law giving the Tribe a period of one year to establish its own boundary system. A tribally initiated task force is currently working on establishing such a system. The Bureau's view is that the appropriations committees' moratorium eliminated the year of grace for tribes to develop their own systems. That year would not be up until October 19, 1985. The timing is such that the Bureau boundaries should not go into effect for the 85-86 school year. The proposed language indicates agreement that Bureau boundaries have gone into effect and consequently will be in effect for the coming school year. We do not believe this is legally correct.

Section 4 -- Bureau of Indian Affairs Education Functions

We support the inclusion of a five year plan for capital improvement. We do not understand the new language which has been added to the old 561 language related to the review of new school start applications filed before October 1, 1984. We support the inclusion of the clause "for routine preventative maintenance."

In the next section we believe there is confusion which results from the elimination of the language which made the Director of OIEP responsible for the implementation of the maintenance of school facilities. The language now indicates that the EPAs will authorize funds for expenditure in the maintenance program; however, due to the other amendments in this section, it is clear that school superintendents have no such authority. This is very confusing and needs to be clarified. There needs to be a separate statement conferring this authority upon them or the provision might result in even more problems in facilities maintenance. We have attached a suggested language for this section.

Section 5 -- Allotment Formula

We have no particular problem with the elimination of letter (I).

(e) -- The nature of this section which was to have set up a separate fund for merit pay awards has been completely changed and at this point appears meaningless unless this is an addition to the section and not instead of the current language in Section 505 of Title V.

Section 6 -- Uniform Direct Funding and Support

This section is quite confusing. It appears to do three things: 1) authorize forward funding 2) authorize a staged advance funding 3) provide for advance notice of funds available. It indicates that allotments will be "published". We do not understand if this means that allotments will be issued on July 1 and November 1 or whether it simply refers to a notice being published. Does this section provide that a school can carry funds over for six months even if no advance funding allocation has been made? Does this section establish a nightmare accounting problem? We are unclear on how this would work and believe a reworking of the language may be necessary.

2(B)(6) -- We still find that the authorization to expend funds imposes a limit on what schools can utilize to procure supplies and equipment, though this is not what the section is supposed to do. This becomes very serious with the amendment in that $25,000 is an inadequate amount for large schools to expend for supplies and equipment. This language definitely needs to be reworked to say what it means.

Section 8 -- Voluntary Services

We are concerned at what level voluntary services can be accepted by the Bureau. Is this a function that will have to be specifically delegated down the line? If so, it is a very long line when it starts with the Secretary. We strongly support the intent of the clause.

Section 9(c) -- Housing

We support the amendment but hope that a criteria to define "isolated school" will be present in the report language. It would probably be well to strike the word "isolated" from the Act.

Section 10

We believe there is a problem with this section that potentially impacts on school closures and the establishment of boundaries. The protection of the law which was in place at the time certain unlawful BIA actions were taken, now would be retroactively withdrawn.

ATTACHMENT:

Section 2006(b). The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with the provision of education services by the Bureau including (but not limited to) school custodial personnel, and all personnel engaged in the planning of school facilities. Nothing in this Act shall be construed to require the provision of separate support services for Indian education with respect to contracts, personnel or facility maintenance.

(c) The Assistant Secretary shall submit in the annual Budget a plan -

(1) for school facilities to be constructed under the system required by Sec. 2005(c) of this Title;

(2) for establishing priorities among projects and for the improvement and repair of education facilities, which together shall form the basis of the distribution of appropriated funds; and

(3) including a 5-year plan for special improvements.

(d) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall include, but not be limited to -

(1) a method of computing the amount necessary for each education facility;

(2) similar treatment of all Bureau and contract schools;

(3) a system for the conduct of routine preventive maintenance.

The agency superintendents for education, or the area education program administrator in the case of multitribal boarding schools located off reservation, after consultation with appropriate local school boards, shall make arrangements for the maintenance of education facilities with the supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. No operation and maintenance funds may be expended or authorized for expenditure by an agency superintendent or area director for the maintenance and operation of educational facilities until written approval to be issued on a quarterly basis of a maintenance and operation plan is given by the agency superintendent for education or by an area education program administrator, after consultation with the appropriate local school board. Approval by the agency superintendent for education or by an area education program administrator shall be given only when there is assurance that necessary maintenance has been, or will be, provided in a reasonable manner.

Mr. TAYLOR. Mr. Hoffman, why don't we just proceed orderly across the table there? You're next.

STATEMENT OF BRUCE HOFFMAN, REPRESENTING THE ASSOCIATION OF NAVAJO COMMUNITY CONTROLLED SCHOOL BOARDS, INC., ROCK POINT, AZ

Mr. HOFFMAN. Thank you very much.

Just to followup on what Vern was saying about contract schools and boundaries, we I think—perhaps not universally, but most of us—would appreciate a boundary system that lets a community school identify its student area by its community. I think the weakness that the Bureau has at this point is not having a system to go along with lines on a map, and without a system of moving students from one school district to another—Navajo people do have summer residences, winter residences, and there is a lot of moving around—I think the Bureau needs to come up with, temporarily at least, a system to go along with the maps. The task force that Vern is a member of has developed the Navajo Area Student Attendance System which, after it is blessed by the appropriate States and everyone else involved, I think will be very effective.

Again, to reemphasize what our colleagues from the Plains have said about financial reporting, I did bring along for submission a copy of the Bureau's last attempt to provide a standardized financial accounting system. It had 1.6 million financial codes by which to spend your money. For the Eastern Navajo Agency, they would wind up spending 23 cents for each code for their whole agency budget. We don't think that is what the Congress intended but that was the Bureau's last attempt to set a financial accounting system.

If the report language could clarify just what the Congress would like to hear in terms of common data, common information, I think the contract schools would be more than willing to provide information on how they spend their money. I don't think anyone needs to have as extensive an accounting system as the Bureau has proposed. And, as mentioned, each contract school has to have a certified accounting system that meets commonly accepted standards. That is required by law and regulation, and you can't get money to spend without an accounting system; so if the report language could clarify what degree of reporting of expenditures, we would appreciate that.

In section 5 of the bill, the formula amendment to allow for summer schools has been deleted. We appreciate the concern everyone has about spending an extra $15 to $20 million for a summer school program, yet at the same time the Department of Education, through chapter 1 funding, has consistently allowed schools to run a summer program with chapter 1 fund.

This past year several Navajo contract schools did not run summer programs because the Bureau would not allow them to use chapter 1 funds. The chapter 1 funds go through the BIA and then down to the school. The ones that did have summer programs, had their programs curtailed to a great extent because of what the Bureau was saying you could use that money for, and it doesn't match up with chapter 1 regulations.

At the same time, now, we are not being offered any alternative to funding that summer program under the formula, so in order to meet the needs of kids who have needs during the summer, we would have to fund the summer program ourselves. We suggest that we can accept the deletion of the summer program amendment here but we encourage the committee to encourage the Bureau to allow chapter 1 funds to be used for summer schools.

Many of our comments, our written comments on standards, on section 2, were prepared with some apparent misunderstandings of Public Law 95-561. Thanks to the efforts of many of the staff members present on the room, we have received clarification, and it looks like S. 638, the Self-Determination Act, will survive S. 561. We were wondering for a time whether or not it would.

I think the committee could put into the report language that section 1121(e) of S. 561 does allow for contract schools to develop local educational standards as a part of the contract with Government, that these standards can be reviewed and negotiated. If the Bureau finds them unacceptable, they can decline the contract. Probably a half a dozen Navajo schools started contracting before 1975 and had to have standards in their contracts since before that time. Rock Point, the school that I work at, began contracting in 1972 and had standards put in its contract. If we can be assured that such standards can be continued, we believe self-determination will be encouraged by S. 561.

Overall, we agree and support S. 1398, and we support the recommendations our colleagues have made. We thank you for the opportunity to present. Thank you.

[Mr. Hoffman's prepared statement, on behalf of the Navajo Community Controlled School Boards, Inc., follows. Testimony resumes on p. 107.]

PREPARED STATEMENT OF BRUCE HOFFMAN, REPRESENTING THE ASSOCIATION OF NAVAJO COMMUNITY CONTROLLED SCHOOL BOARDS, INC., WINDOW ROCK, AZ

Regarding Technical Amendments to PL 95-561,
as passed by the amendments of TITLE V of PL 98-511
as proposed under S. 1398

Submitted to:
Senate Select Committee on Indian Affairs,
Senator Mark Andrews, Chairman
July 17, 1985

The Association of Navajo Community Controlled School Boards, Inc. (herein,"ANCCSB") is honored to be able to represent its concerns regarding the proposed bill Sec. 1398 to the Senate Select Committee on Indian Affairs. We are appreciative that the Committee has seen fit to hold a hearing on a bill which has been described as only "techinical amendments" to P.L. 98-511, but it is a bill that our schools feel is very important and will greatly affect all of BIA education, including both the PL 93-638 contract school boards and Bureau schools everywhere.

We would like to highlight our major concerns with the proposed bill, so that the Committee might be able to re-consider the impact the bill will have on Indian education and make important changes to the proposed language prior to full Congressinal consideration.

1. Sec. 1398 amends Sec. 502(b), amending Sec. 1121(d), 95-561

The purpose of this correction is to add back into the bill language inadvertently omitted in P.L. 98-511, but in P.L. 95-561.

Although we cannot argue the intent of Congress at this point, we do believe that contract schools will suffer from manipulation and bad faith actions of the Bureau of Indian Affairs if no recourse is provided to a Secretarial decision to reject a local set of standards. The proposed language states the Secretary can reject "for good cause" yet no guidance is provided; and no review is allowed if a rejection is made for any reason. Our experience is that the Bureau does not want contracting to continue!! This has been noted by many tribes and tribal organizations, congressional reviews, and GAO audit reports. Contract schools serving Navajo students have by-and-large developed appropriate standards for student learning and behavior, based not on inappropriate state standards but on the felt needs of the parents and community input and sensitivity to where Navajo education must develop. Without recourse, some of the best Navajo contract schools will be turned upside down, just to meet someone else's idea of what "standardized" education should be. We do not believe that this is the will of the Congress.

RECOMMENDATION:

a. That Sec. 502(b) be retained as initially passed; or

b. That a contract school board, be allowed to use the declination procedures under P.L. 93-638 to require the Bureau to demonstrate that a school's alternative standards are providing "deliterious effects and harm" to Indian children served, as a way to protect the self-determination initiatives that successful schools have had in using alternative standards.

c. That Bureau-operated schools that are also successful with "non-standard" standards be allowed the appeal procedures under 25 C.F.R. Part 2 for a rejection of proposed alternative standards.

2. Sec. 2(a), S. 1398; Sec. 1121(d) 95-561

We would like to note to the Committee that the Bureau has yet to publish in final form the educational standards required by the Act. Yet without these standards, contract schools are continuing to develop their own standards, pedagogies, and systems to meet the needs of their children. We are concerned that Indian initiatives to apply themselves to the "grasswork basics" of adapting "education" in a meaningful way to their communities will be stymied. The basic change of direction found in P.L. 98-511 and S. 1398 from the original intent of P.L. 95-561 is most disturbing: the Congress appears to want contract schools to emulate and imitate programs that have been widely criticized in recent years (e.g. A Nation at Risk).

Sec. 1121(e) also offers contract schools the option of requesting alternative or modified standards to meet the special needs of the Indian children and the contract school. This has not been changed by P.L. 98-511 or by S. 1398. We are unsure how the Bureau would implement this provision, in light of the Secretary's right to reject any alternative standard, without review.

RECOMMENDATION:

a. That the contract schools continued to be allowed to establish alternate standards, with the help of the Secretary, and that all standards be subject to the declination criteria, the foundation of Indian Self-Determination.

b. That the Committe support previous report language that indicated that schools that have operated on "non-standard" educational standards be allowed to continue to do so, subject, again, to the declination procedures under P.L. 93-638.

3. Sec. 502(c)(2) 98.511

Although a small error, we are confused as to what "subsection (a)" refers to in P.L. 98-511, Sec. 502(c)(2), as the standards referenced therein would appear to refer to standards relative to public health, immunizations and the like.

RECOMMENDATION: That this reference be clarified.

4. Sec. 2(b)(2) S. 1398, Sec. 502(c)(2) P.L. 98-511

The Committee has added a good clause that would prevent the Bureau from terminating a contract (or failing to renew a contract) for an additional year, allowing for technical assistance to be provided to the school in need.

RECOMMENDATIONS:

a. That the language refering to the declination procedures under P.L. 93-638 be added herein; that the Bureau must follow present declination criteria to terminate or fail to renew a contract. This is based on a fairly widespread conception that the mere lack of accreditation or a lack of BIA standards means that a school is not providing quality education. We know of no study that has ever shown that "having standards" means that quality education will be provided. In fact, A Nation At Risk would suggest just the opposite. The criteria for declination were established by the Congress as a means of control over contractors who are inattentive to quality education. Declination is the means that should be exercised to control contract schools.

b. It appears that from initial reports, the major determiner that will lead a school to comply or to be out of compliance with standards of any kind will be the availability of sufficient funds to meet the costs of implementing Bureau (or similar state) standards. We suspect that the standards have not been published because too few schools could readily meet them. In addition, the FY 86 budget request, the Bureau did not request funds to upgrade contract schools because they weren't required to comply with the proposed standards. It appears the Bureau is willing to "sacrifice" funding contract school improvements (like funding the certification of non-certified instructional staff) on the one hand, and yet want to require contract schools to imitate their standards. We believe that this is another sign that the Bureau is not supportive of self-determination and they desire all the controls possible to turn the "outlaw" contract schools back into Bureau schools. This is in our view a further argument for requiring present declination criteria be used when deciding to refuse to contract.

5. Sec. 2(B)(3) S. 1398; Sec. 502(c)(3) P.L. 98-511

In P.L. 98-511, congress asked that contract schools be provided a financial management system that would "yield data" comparable to those of Bureau schools.

a. At that time, we expressed our concern that a legislative mandate for non-profit corporations to provide data comparable to the Bureau's was an anomaly, at best. We have read numerous reports about the Bureau's inadequate accounting systems they presently have; we have read about the disastrous mis-use of funds over years for the acquisition of ADP equipment and programs that have produced little useful information. The GAO reports unequivocally state the Bureau doesn't know how much money it has or where it has it!

We were concerned a year ago with this language, but there was some hope that a national Indian organization might save the schools from disaster. However, we fail to understand why this is being changed to allow the Bureau to now do this system.

In 1978, the Bureau developed under Contract No. MOO14202768 a set of accounting manuals for contract organizations. They were never fully used because of the complexity of accounting.

In 1981, the Bureau attempted to implement a cost accounting system without any consultation with contract schools. Documents were circulated (the Navajo schools received copies after they were supposed to go into affect) with no in-service training, with no program for conversion from one system to another, etc. This system simply 'died' without further word.

In 1983 the Bureau decided to do this again "in-house" and produced a monstrosity of a system with nearly 1.6 million possible account codes. And they tried to implement it!

Now we understand that the Bureau's concern is that there "may not be a national Indian organization" to do the work, and that they would like to do it themselves.

RECOMMENDATIONS:

a. That the Bureau not be allowed to do this task, and that the proposed language be modified with this clearly in view. We fail to understand how an organization that cannot acccount for it funds can be allowed to tell independent, non-profit corporations, already required by federal law and regulation to have certified accounting systems in place in order to contract, how to keep track of their funds. This is a conundrum!

b. That the Bureau be required to contract with a national organization. We have observed the Bureau's contracting out mandated responsibilities before, and have noted that Bureau-let contracts can be manipulated to enable for the Bureau to get the control that it wants. Without a national Indian organization to perform this service, with input from contract schools, we will simply become an extension of the Bureau itself. If you control the funds you can control the organizations affected.

c. That the Congress add to the language of the report following:

"The Bureau will first consult with the Department of Education and seek its assistance in establishing the parameters for contract school accountng."

We believe that the Department of Education, especially TITLE IV (Indian Education) has consistently provided simple, direct, clear, and Indian-usable accounting procedures and systems that the Bureau itself might do well to emulate.

6. Sec. 2(d) S. 1398; Sec. 502(g) 98-511

The Navajo contract schools, together with the Area school boards and the Navajo Tribe were appreciative that a new subsection (g) on school closures was included in the Amendment of 1984. However, the technical amendments we are reviewing at this time appears to provide the Bureau another school year in which to close, consolidate and/or curtail programs without regard for the restrictions the Congress passed last year. We do not understand why the Congress wishes to bless the Bureau's initiatives to close Indian schools.

RECOMMENDATIONS:

a. That the effective date of the school closures subjection 1121(g) be made effective the date the amendments were passed in October, 1984.

7. Sec. 2(d)(2) S. 1398

This new language allows the Bureau to close schools based on immediate hazard to health and safety. Although we have no quarrel to the basic rationale that the Bureau needs some authority to protect life and property, we believe that the language as proposed can be used by the Bureau to permanently close schools per already developed plans, without any of the consultation and communication requirements found in the statute. This situation is aggravated by the fact that so many federal school buildings for Indians are in poor disrepair!! Although not the intent of Congress, the Bureau could readily argue to closing any of a majority of schools, contract and BIA-operated, because hazards can be found at many of them.

RECOMMENDATIONS:

a. That report language clearly reflect that this clause is not intended to give the Bureau "open season" for closing down Bureau facilities, and that the intent of the law should be complied with.

b. That the language be re-drafted to state that such closings of Bureau educational facilities will be temporary until repairs are made, and that permanent closure of any facility for health and safety reasons would have to follow the regulations implementing this subsection.

8. Sec. 2(d)(3) S. 502(g) S. 1398, School Closures, Consolidation and Curtailments.

We believe that the language of the October 84 amendments is much stronger in requiring the Bureau to actively gain parental participation in the possible "adjustments" to schools' existence, arrangement and utility. We believe that parental particpation is key to the improved educational opportunity for Indian children.

The proposed revision does offer a six-month period for warning a community that their school may be closed or otherwise affected. The proposed revision in our view weakens the requirement that the Bureau involve the people affected in school closings. Now parents and the tribes are allowed to comment on what is happening to them, but there is no longer a requirement on the Bureau to actively consult, communicate and dialogue with the people affected-- it is as if the Congress is blessing the present way the Bureau operates, rather than directing them to become more effective in addressing the facilities needs of Indian communities.

RECOMMENDATIONS:

a. That the original language be left intact.

b. The the Congress reaffirm the federal policy that children be educated in the community closest to their family's home.

c. If changes are needed (such as eliminating the individual assessment of each child's needs, which is time-consuming and probably not cost-effective), then other language similar to that authorized by the Congress in P.L. 95-561, Sec. 1101(c), amending P.L. 874, para. (iii) be included, which states:

> "(iii) tribes and parents of Indian children claimed under section 3(a) are--
>
> "(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph:
>
> "(II) actively consulted and involved in the planning and development of programs assisted under this paragraph; and
>
> "(III) afforded a general opportunity to present their overall views on the educational program, including the operation of such programs, and the degree of parental participation allowed.
>
> PL 95-561 Sec. 1101(c)

d. That additional protection for Indian programs be afforded in the assurance that only the Congress can close down a school, having reviewed all the reports as required herein.

9. Sec. 3 S. 1398; Sec. 503, 98-511 School Boundaries

The greatest weakness in the Bureau's "mandating" school boundaries at the request of the Congress is that no one (neither in congressional report language or in BIA information known to us) has explained what a boundary does. The Bureau's Central Office has accepted the Navajo Area school boundaries submitted by the BIA Agency Education Superintendents. But there is no certain knowledge as to what a boundary actually requires of schools, communities, parents and students. The Bureau has yet to implement any coherent school boundary policy, and we do not believe that simple lines on a map will be sufficient to prevent many students from dropping out of schools or falling "between cracks." A "school boundary" for a Bureau school simply ignores that there are public schools and private schools whose students (and concerns) must be considered in "boundary rule-making." We are hopeful that the Navajo Tribe will be allowed to re-establish appropriate boundaries and implement a Reservation-wide boundary system that will provide for the best education for Navajo students.

RECOMMENDATION:

a. That the Congress require the Bureau to develop a set of rules and guidelines in consultation with Indian Tribes and school boards that will make meaningful what the boundary lines on a map mean.

b. That if the other tribes and school districts accept BIA school boundaries, the Congress provide special consideration to the Navajo Nation to allow the additional one year that the Tribe believes is need to implement the coordinated Navajo Educational Service Area System Policies, as recently adopted by the Tribe's Division of Education.

10. Sec. 4, S. 1398: Sec. 504, 98-511 Bureau Functions

The contract schools in the Navajo Area have met with various degrees of success and failure in contracting for the operation of their schools from Bureau program managers who would prefer not to have contracting take place at all. Some have fared well, because of "enlightened" guidance from their COR or Agency Superintendent. Some have nearly been closed down because of hostility from the same. Our overall recommendation has been not to have Education "do the contracting" with schools because it has been difficult enough to get one contracting officer/office to learn the rules and re_gulations of PL 93-638 correctly enough to make the system work. We had felt that having a contracting officer at each program would, a) provide more roadblocks to contracting, because some Bureau staff would lose their jobs or program management authority; and b) distribute the uncertainity of "how to" contract more widely with more Bureaucrats in charge of things they may not understand very well.

RECOMMENDATION:

a. We concur and support the separation of the contracting authority apart from Bureau Education.

11. Sec. 4, S. 1398, Sec. 504 98-511

We note that on Line 23 of p. 6 of the proposed amendments, the authors have included a reference to the "new school start" problem in the middle of a paragraph relating to Bureau contracting functions. We do not understand this connection.

Secondly, and more critically, the proposed language (inadvertently?) authorizes the Bureau to review new school start applications (from before Oct. 1) "under the rules and guidelines in effect on the date the application was filed." We are seriously concerned that this language may be considered to authorize the Bureau to review such applications under "rules and guidelines" rather than under the federal regulations 25 C.F.R. 271 ff instead. The Bureau has promulgated any number of rules and guidelines in the past. We do not believe the Congress should "bless" those directives to have the authority of federal regulations. We believe that this language needs to be changed, so the Bureau does not perceive that their guidelines (not published in the Federal Register) are given statutory support to be as regulations.

Additionally, no provision is made for the one year period

Oct. 1, 84 to Oct. 1, 85.

RECOMMENDATIONS:

a. That the language be re-drafted to say that any new school start applications submitted prior to Oct. 1, 1984 be reviewed under the contracting regulations implementing P.L. 93-638.

b. That the Congress clarify what procedures are in effect from Oct. 1, 1984 to the effective date of these amendments, which, per Sec. 10(a) of these amendments, would be Oct. 1, 1985. Right now, this one year period is not addressed and would remain in "limbo."

12. Sec. 4(b) Facilities, S. 1398; Sec. 1126(d) 95-561; Sec. 504(d) 98-511

We support the inclusion of a requirement for a five-year plan.

We recognize that the authors were attempting to change as little as necessary to the amendments P.L. 98-511 to "give back" facilities management to the office of the Area Director. However, as proposed, the paragraph is unclear as to who has the authority to obligate and who will do the obligating. As re-drafted, it appears that agency education superintendents will "authorize for expenditure" facilities money that the Agency Superintendent will expend. However, this kind of detailed coordination could allow for a number of problems when there is no agreement between these positions, or when "authorizations" for expenditure are late or non-existent. We do not believe that the intent of this language will produce anything but confusion and a disintegration of facilities services.

RECOMMENDATION:

a. That if the Congress does not want to provide Education with Facilities funding, the proposed language should strongly urge coordination and cooperation between the offices, with the Area Director as final arbitrator in disputes, but leave the authority to expend to those mandated to actually provide the services.

13. Sec. 5(3) S. 1398; Sec. 505(a) 98-522; Sec. 1128(a) 95-561

We are discouraged to see that the Congress has decided in a "technical amendment" to reverse their decision to fund summer schools or a 12-month program for students. This is especially discouraging because as part of the Administration's cost-cutting, the Bureau is now limiting (or eliminating) summer school programs for disadvantaged Indian children under Chapter 1 (ECIA). The Bureau is in effect asking schools to "scalp" their regular school year program if a summer school program is needed. We know of no public school district that is required to lower basic services to meet the special needs of students who need help through summer programs.

RECOMMENDATION:

a. That the formula allow for the distribution of funds for summer school programs; or

b. That if this is not possible, the Bureau be required to fully consider the needs of disadvantaged Indian children and not routinely or programatically place roadblocks for the use of Chapter I funds for summer school projects. It is not appropriate to disallow ISEP-funded summer school projects while requiring that Chapter I summer schools be supported in part by ISEP funds.

14. Sec. 5(a)(3) S. 1398; Sec. 505(c) 98-511; Sec. 1128 95-561

The contract schools serving Navajo children did not originally support the proposal that a separate fund be established for merit and quality step increases outside of the formula, as it would be subject to mainipulation by the Office of Indian Educatin Programs and be used to encourage some to "play ball" with Washington, and be refused to those who question the Office's policies. At best, since the Bureau has been so adamant against contract schools, we did not believe we would receive much if any of funds authorized therein.

At the same time, we support the new language which order that supplemental appropriations be shared to all schools under the formula. We are unsure that this has been consistently done by the Bureau in the past. Late appropriations may make such funds unavailable for obligation to Bureau-operated schools.

Nevertheless, the Bureau should be required to distribute such funds via the formula, so that although funds are lost to BIA-operated schools due to federal procurement and financial procedures, contracts with PL 93-638 contractors can be amended by Sept. 30 for use as carry-over funds under P.L. 93-638 authority.

RECOMMENDATION:

a. That the language proposed remain as written, with added report language that even if pay supplements are authorized by the Congress late in the year, the OIEP will make the distributions and contract school contracts will be amended to allow them the use of this money.

15. Sec. 6(a)(4) S. 1398; Sec. 506(a)(2)(A) 98-511; Sec. 1129 95-561 Forward Funding

We find the intent of Congress to provide for some alternative to "double funding" BIA education meritorius. We are unsure whether or not the provisions recommended will do much to help the situation.

a. The proposed revision is very confusing. Frankly, we are not sure of what the language is saying. Notes that were distributed with the bill are really saying that there will be "advanced notice" of funding levels. This is good. But in fact, it is no more than what OIEP is doing now. And all a notice can do is provide an estimate (which may be a help, but cannot be used as a defense against charges of violation of the Anti-Deficiency Act!) We understand the explanation in the notes, but do not understand the proposed language itself. It would appear at one point that BIA-operated schools will have a "carry-over" authority for six months. This should be clarified. We cannot understand what amounts should be published in July and in November. And what happens if there is no appropriations by November?

RECOMMENDATIONS:

a. That the proposed language be re-drafted to be clearly understandable.

b. That the Committees consider simplifying this process by providing an interim authority for BIA-operated schools (perhaps all of OIEP) the same carry-forward authority that contract schools are allowed. This does not fully meet the problems of knowing how much a school will have to hire staff and meet expenses, but it will help by giving BIA schools the opportunity to better utilize their annual appropriations to the fullest.

c. That the Congress require the Bureau to work with the Department of Education to provide for "school year" funding of educational programs, i.e., obligating a FY appropriation in the last quarter of the FY. Yes, this would require two appropriations, but they could be spaced apart initially by 4 to 7 months; thereafter, there would only be one. The Department of Education, with its experience and apparent competent financial management system, could be an excellent resource for OIEP in establishing a better financial accountability system.

16. Sec. 7 S. 1398; Sec. 509 98-511 Annual Reporting

The new language removes the audit requirement for the Central Office/Agency offices of OIEP, and requires audits only of BIA and contract schools.

Although we fully concur that schools should be routinely audited, we cannot accept as a technical amendment the elimination of audits for BIA Education administration.

We have read too many reports of mismanagement of funds at the administration levels of the Bureau. We are concerned that their errors may be more significant than those of the local school boards. For example, what did happen to the thousands (millions??) of dollars of ADP equipment the OIEP bought for its schools, and then recently pulled back? What was the basis for OIEP's bailout of some $400,000 at the BIA school that overspent its ISEP funds? Just where do we find accountability for the administrative levels of the Bureau?

RECOMMENDATION:

a. That the proposed language deleting "The Bureau, the Office and" not be deleted, and that the present language in 98-511 stand as is.

17. Sec. 9(c) HOUSING, S. 1398; Sec. 512. 1142(a) 98-511

We agree with the managers with the changes regarding the lowering of the percent amount that is charged for housing. With the potential of a 90% reduction in rental rates, no housing unit would be able to be maintained. A maximum limit of 40% is much more reasonable.

Nevertheless, this will not meet the lowered costs that many public school districts can offer rental rates of $50 and $60 per month. But it will help Bureau schools to retain and recruit staff.

Some confusion remains as to who is going to be allowed to take a reduction in rental rates.

a. The definition of "educator" (Sec. 1131(n)(1)) is obscure enough to allow virtually anyone on a staff to be called an educator.

b. Should this definition _not_ include dormitory staff, and at least at contract schools, lower paid employees such as bus drivers, cooks and other support service personnel, we believe that the higher paid "education" staff will have an undue advantage in receiving higher pay and paying less for rent than other staff. This would seem to be patently unfair: those who have more, get more; those who have less, even from them it shall be taken away!

c. S 1398 states that the rent waivers and reductions will be allowed to those persons in "involuntary non-pay status." This would appear on its face to mean that _only_ status-quo federal employees are eligible; that "contract status" federal employees are not eligible; that contract-school staff are not eligible. This would suggest that the higher paid education staff are getting the biggest break in rental rates, and that lesser paid staff get no break.

d. Isolated school is not defined, and we are concerned what criteria will be used to determine what schools will be provided this option.

e. We are concernedd that the Administration's new tax package, which suggests that some employee benefits be taxed, not include taxing the savings in the reduced rates, as this would also negatively affect employee recruitement.

RECOMMENDATIONS:

a. That the language clearly states that rental reductions made on a school-wide basis will be available to all employees working at the school (but not to those renting housing units but employed elsewhere, such as at a PHS facility.) Without this clarification, the statute may create more problems among low paid staff than it does in alleviating problems.

b. That the Congress clearly allow the rental rate discounts be available to staff at BIA-operated schools, both status-quo and contract employees; and that the discount be available to contract school boards.

Mr. TAYLOR. Thank you very much for your statement. We may have questions when we complete the panel.

Mr. Eberhard.

STATEMENT OF ERIC EBERHARD, DEPUTY DIRECTOR, NAVAJO NATION WASHINGTON OFFICE, WASHINGTON, DC, ACCOMPANIED BY ALICE LUNA, STAFF ASSISTANT

Mr. EBERHARD. Thank you, Mr. Taylor, and thank you to the committee for the opportunity to be here and for the excellent work on S. 1398. We are very pleased in general with the bill. We have submitted for the record some detailed written comments with some specific suggestions for language changes in the bill, but I would emphasize that in general we are pleased with it.

We are particularly pleased that this issue is before the appropriate authorizing committee this year. We were quite disturbed last year with these matters being considered by appropriations committees as opposed to authorizing committees.

I would like to primarily concentrate on one aspect of education which is not addressed by these amendments. The Navajo Tribe has a policy of promoting parental participation and direct involvement in the education of Navajo children. Under the tribal code, parental participation is a cornerstone of the tribal educational policies.

As drafted, S. 1398 really makes no provision for direct parental participation in Indian education. There is provision made for comment on matters such as closures, consolidations, curtailments, school boundaries. Comment is simply not enough. We currently have the right to comment on these matters, and our experience is that comments are received, put on the table, and either considered or ignored, but in either case they are not effective in terms of realizing from the Bureau meaningful results. Parental participation is not a fact of life in Indian education. It should be.

We think that allowing for parental participation has some precedent in Federal law and policy. Public Law 93-638 is one example but there is an even better one. Public Law 98-561 expressly provides for direct parental participation in planning for the expenditure of impact aid funds. We acknowledge that there are communities, in Navajo country and elsewhere, where that provision is little used, but there are other communities where it is heavily used, and that is the goal of tribal policy, to bring the parents into the process. We think it is also consistent with the goals of Federal law and policy in Indian education.

The tribe is very interested in comprehensive, long-term planning for education. The inverse of that is that the tribe is very tired of short-term, patch-it-up type solutions to educational problems. It is our experience over the last 3 years that those short-term kind of patch-it-up approaches are what really is most evident in Federal policy, not long-term comprehensive planning. We think that the missing element there, at least at Navajo, is direct parental involvement. We think parents provide the catalyst for that long-term planning.

An example of how that works on the ground is in the area of school closures. The Navajo Nation is currently experiencing five school closures—unplanned, unannounced. We were allowed to comment on them, and certainly we did, both here in the Congress and in the Bureau. The fact of the matter is that the comments had little or no effect. Actions are being taken without regard to tribal concerns and without regard to parents' plans for their children or even the opportunity to express those plans.

Quite often these closures occur under the quise, if you will, of underutilization of school facilities. We acknowledge we have underutilized facilities, and we are more than ready and willing to sit down and figure out in a comprehensive way which facilities should be consolidated, which facilities should be closed, and where we need new facilities. We are unable to meaningfully do that. The fact of the matter is that most closures are occurring because the Bureau has simply failed to maintain the facilities; finds that the facilities somehow now present a serious health or safety hazard to the students; therefore, closure is required. No discussion is to be had.

We think that in part that process can be resolved in these amendments if the Bureau is required and mandated by the Congress, not just to hear our comments, but to sit down at the table with us and, through participation of the tribe and the parents of Navajo students, develop a long-term plan that will lead to some closures, some consolidations, but will overall improve the quality of education and educational facilities for the Navajo people. That is not currently required by law. The Bureau does not currently engage in that practice.

The practical effect of the current situation is not to promote tribal self-sufficiency or tribal self-determination. It is quite the opposite. It is to enhance Bureau control of education on the Navajo Reservation and, I personally believe, on all reservations in the United States.

Provision for direct parental and tribal involvement will promote tribal self-sufficiency and tribal self-determination. Most tribes and most Indian parents are fully competent and capable of directing their children's education. They do not need the BIA to tell them what their standards should be. They need the BIA to assist in the development of those standards, but not to impose them.

With those comments, I would just like to close with a reiteration of the concern that Mr. Duus raised on the effective date issue as respects school boundaries. I think that some careful analysis needs to be done of the 1984 amendments on that issue, and how these amendments would affect it. It's critical to the Navajo tribe that we have a fair opportunity to develop our own boundaries, rather than to have boundaries imposed by the BIA.

We recognize that the current version of the amendments, as presented in S. 1398, do allow us to petition at any time in the future. I would emphasize, though, that we have embarked on a process of developing our own boundaries, in an atmosphere where the Bureau has tried to impose boundaries for whatever reason, and unless the Congress specifically allows some additional period of time—perhaps as much as a year—for the tribe to implement its own boundaries, I think there is a fairly serious chance that we will have imposed boundaries well into the foreseeable future.

Thank you.

Mr. TAYLOR. Thank you, Mr. Eberhard.

[Mr. Eberhard's prepared statement, on behalf of the Navajo Nation, follows:]

PREPARED STATEMENT OF ERIC EBERHARD, DEPUTY DIRECTOR, NAVAJO DIVISION OF EDUCATION, NAVAJO NATION, WINDOW ROCK, AZ

on the
Indian Education Technical Amendments Act of 1985
Before the
Senate Select Committee on Indian Affairs
and the
House Education and Labor Committee

July 16 and 17, 1985

The Navajo Nation welcomes the efforts of Congress to resolve the existing controversies regarding Title V of P.L. 98-511. The combination of passage of P.L. 98-511 and the moratorium on the expenditure of funds for Title V of that Act has resulted in considerable confusion and difference of opinion in the past year regarding the status of provisions of that title dealing with critical issues such as procedures for school closures and establishment of school attendance boundaries. Appropriate technical and clarifying amendments can assist to resolve this confusion.

The proposed technical amendments have been reviewed by staff of the Navajo Tribe's education division and have been discussed with representatives of the BIA schools and contract schools serving the Navajo Nation. Based upon the review and discussion, the following comments are offered.

One observation which all of those reviewing the proposed legislation have made is that more is involved here than technical amendments. While many of the provisions are purely technical in nature, others are substantive, changing or repealing substantive provisions of the law approved by Congress last year. There is no inherent objection to making substantive changes. We are concerned, however, that when these changes are characterized as "technical amendments" insufficient attention may be given to the substantive impact of the proposed change.

We are also concerned that in some cases the language of the technical amendment is unclear. In some cases it is possible to ascertain what was meant. However, this may not be the strict meaning of the language used. In some cases report language may clarify ambiguous passages. In other cases, as appears below, we recommend a rewriting of the section for clarity. Our comments, section by section, appear below.

Section 1. No comments.

Section 2(a), page 2, lines 13 and 14. We would recommend that the restored language be amended by deleting the last sentence and inserting the sentence:

> "Such decision shall be final and shall
> not be subject to review unless clearly
> arbitrary and capricious."

Such language would assure that while a rejection of tribal standards for good cause will not be subject to rehearing or reconsideration, an avenue does exist to question the good faith of a determination by the Secretary that good cause exists to reject a tribal standard. A provision for totally unreviewable decision-making invites abuse.

Section 2(b)(1), page 2, line 18 through page 3, line 1. We support this change, but in conjunction with this change we would recommend a further clarification of the language in P.L. 98-511. In section 502(c) of P.L. 98-511, there is a requirement that within 2 years contract schools come into compliance with standards prescribed in subsection (a). This would appear to be subsection (a) of Sec. 1121 of P.L. 95-561. Subsection (a) in either section 1121 of 95-561 or of section 502 of 98-511 does not contain the basic provisions prescribing standards. Provision for BIA standards is contained in Sec. 1121(b). Provision for alternative standards to meet the requirements of state standards is contained in Sec. 1121(c). Provision for tribally adopted standards is contained in Sec. 1121(d). Provision for alternative standards arrived at by agreement between a contract school and the BIA is contained in Sec. 1121(e). We believe that it is important that all of these avenues for compliance with the standards requirement be incorporated into the requirement contained in Sec. 502(c) of P.L. 98-511 as amended by the technical amendments. Therefore, we would recommend that reference be made to the standards prescribed or authorized in subsections (b) through (e) of Sec. 1121, rather than referencing subsection (a) which does not prescribe standards.

Section 2(b)(2), page 3, lines 2-8. This section should be amended on line 5 by adding the words "and tribe" after the word "school." In addition, further language should be added stating that failure to meet the requirements of this section or to agree on an appropriate standard for the contract school shall be treated on a declination issue for purposes of P.L. 93-638. Failure to include such a provision would establish a means of refusing to enter into or renew a contract outside the declination process in violation of the intent of P.L. 93-638.

Section 2(b)(3), page 3, lines 9-13. We are concerned that this system should not be established by the BIA itself since the Bureau's financial accounting system has proven cumbersome and less than adequate. We feel that the study should be conducted by a national Indian organization with particular expertise in the area of school budgeting. The study should be conducted in cooperation with contract schools. The resulting system should be efficient and thorough. We are not convinced this can be accomplished by modeling the system on the BIA's accounting system.

Section 2(c). No comment.

Section 2(d)(1), page 3, line 18 through page 4, line 1. We agree with the addition of the phrase "substantially curtailed." In addition, we feel that either the bill itself or the report language should clarify the distinctions among closures, consolidations and program curtailments. The Navajo Nation has recently experienced situations in which program changes which were functionally closures were described as "consolidations." We believe that a clarification of the scope of these terms and a description of the protocol for each type of transaction (closure, consolidation, or curtailment) would greatly assist this legislation. In addition, while we do not challenge the language in the subsection, we do not believe that by changing the effective date from January 1, 1984 to the effective date of the enactment of the amendments negates in any way the fact that the provisions of P.L. 98-511 were in place and in effect, moratorium notwithstanding, during the period from January 1, 1984 to the effective date of the technical amendments and apply to any closure or consolidation effected or ordered during this time. This fact should be clarified in the report language.

Section 2(d)(2), page 4, lines 2-7. There is obviously no objection to the temporary closure of part or all, of a school facility for the purpose of making repairs when the facility presents an immediate and serious threat to the safety of the students. We are concerned, however, that this section could be used to justify the permanent closure of a school without utilizing the provisions of the act for closures, consolidations and substantial curtailments. This is a particular concern in the Navajo Nation because we have many facilities which have major violations of national health and safety codes. In many cases it is the failure of the BIA to maintain the facility which has lead to this condition. We have seen allegations of safety hazards used to effect the permanent closure of the BIA school at Sanostee. We would therefore recommend that on page 4, line 5, after the word "is," the words "temporary and is" be added. In addition, we would urge adding additional language at the end of line 7 stating:

> "provided, however, that immediate steps are taken to correct the hazard and that the facility is reopened or the curtailment ended as soon as the needed repairs can be effected. Any permanent closure, consolidation or substantial curtailment of any school shall comply with the requirements of this section before becoming final."

Section 2(b)(3), page 4, line 20. The word "comment" should be deleted and replaced by the words "participate in the decision-making process." In our recent experience, an opportunity to comment on BIA school closure plans has not provided an avenue for any meaningful participation or input into the decision-making process. We would recommend as a reference the provisions in P.L. 98-561, Title IX, Part A, Section 1101(c), creating subsection 5(b)(3)(B)(iii) of the 1950 Impact Aid law, regarding the rights of Indian Tribes and parents to participate in the planning of educational programs in schools receiving Impact Aid funds for the education of Indian children. Similar rights to participate in planning should exist in regard to the closure, consolidation or substantial curtailment of a BIA school.

Section 2(b)(3), page 4, line 24. After the word "shall" add the words "have been involved in the decision-making process and shall."

After the words "notified" insert the words "of the final decision of the Secretary."

Section 2(b)(4), page 5, line 9. Strike the words "with every effort to identify" and insert the words "identification of." If the Bureau makes "every effort" to identify students with special needs it will be able to identify them all.

Section 3. School boundaries. We do not have any objection as such to this section. We do feel, however, that there is a need to clarify the status of the boundaries which the BIA seeks to impose on the BIA-funded schools of the Navajo Area in the 1985-1986 school year. These boundaries were, we believe, invalidated by the provisions of P.L. 98-511. They have also been established without the context of a system for determining the way in which the boundaries are to be applied in special cases, the provision for exception where appropriate, the relationship to public schools, and other concerns. The Navajo Tribe is working with a boundaries task force composed of representatives of the Tribe, public school districts, BIA agency education personnel, contract school board representatives and BIA school board representatives to establish a comprehensive system for school boundaries and attendance areas. This system is expected to be adopted by the Navajo Tribal Council this year and implemented by the 1986-1987 school year. Under all the circumstances, we fear that the imposition of the BIA boundaries this year will be disruptive and confusing. We would recommend language clarifying this situation and report language regarding the invalidity of the boundaries developed for Navajo Area prior to this law which are scheduled to be imposed with the 1985-1986 school year in contravention of the one-year moratorium imposed by P.L. 98-511.

Section 4(a), page 6, line 17 through page 7, line 2. We would recommend report language clarifying the intent of having applications for school starts filed prior to October 1, 1985 reviewed under the law applicable at the time. There should also be language clarifying the status of any new start applications filed since P.L. 98-511 was enacted.

Section 4(b), page 7, lines 13-15, lines 23-25. We recognize what is attempted here and are sensitive to the need to avoid a duplication of bureaucracies. However, we are concerned that there be some way that the education side of the Bureau can compel the allocation of resources to effect the necessary maintenance, repair and renovation of BIA educational facilities. This has been and continues to be a very serious problem. We are concerned that school supervisors be able to supervise the routine maintenance of their facilities and that the agency education superintendent be able to prioritize needs and allocate funds. We are also concerned that the comprehensive plans for capital improvements developed by the Office of Indian Education Programs be able to be implemented and not be countermanded by other entities within or serving the Bureau. There needs to be a plan for the distribution of maintenance funds.

Section 5(a), page 8, lines 8-14. We believe that the utilization of educational facilities for educational purposes during the summer should be encouraged - not forbidden. Standardized testing of Navajo students in BIA schools shows some serious gaps between their tested achievement and that of their counterparts in the dominant society. Schools should be encouraged to develop summer programs, utilizing whatever funding be available, including Chapter I funds, to provide remedial programs for these children. Many public schools throughout the country provide summer remedial programs for their students. The BIA should do at least this much, given the critical situation of Indian student achievement scores.

Section 5(b). No comment.

Section 6(a), sections 1-4, page 8, line 21 through page 10, line 11. We are commenting on the first four subsections of this action as a whole because of a general concern with how this section will work in actual implementation. At the least, we recommend some very clear report language to explain how the advance funding provision is supposed to work. It appears from the language that Congress must make two appropriations for funding to be able to be carried over into the first six months of the next year. Does this mean that there would be an appropriation to make some funds available for the next school year? Does this mean that a school cannot carry over funds unless there are two appropriations? We are also concerned as to the feasibility of having funds available for obligation October 1 of that year "without further action by the Secretary." Does this include even the routine administrative action to apportion out the funds and send out the notices of allotment? What happens if there is no appropriation by October 1 and the schools are funded by continuing resolution? This is particularly confusing because the appropriation is not apportioned to each school by Congress and MUST be apportioned by the Secretary.

We are also concerned with the "advance notice" provisions. When the section says that the Secretary shall publish allotments to each effected school, what does this mean? Does it mean notice of allotment or does he acutally post to the school the spending authority of the allotment? Also, it does not seem likely that the Secretary will always know in July what the final amount of the appropriation for the coming fiscal year will be. How, therefore, can he publish allotments to schools of 75% of this amount? Should it be 75% of the past year's allocation? Again, in regard to the publishing of the allotment of the remaining 25%, it is not clear what the Secretary does if he has to proceed by continuing resolution.

The concerns expressed here arise from difficulties with clarity in the language used in this section rather than from any disagreement that some way is needed to give advance notice of the sums a school has to work with and the need to achieve something like forward funding through the piecemeal approach of advance funding or directly. We are very sympathetic with the goals of this section. We feel, however, that the language needs to be clarified in the proposed law and supplemented by clear explanations in the report to avoid adding even more confusion to the BIA's already over-complex school finance system.

Section 6(a)(5). No comment.

Section 6(a)(6). We think we know what is meant by this section. We just are not certain that it accomplishes what it means. This section could be interpreted to put a $25,000 ceiling on expenditures for supplies. We are certain that is not the intent. Language should be added clarifying that the $25,000 ceiling applies only to supplies purchased without competitive bidding and that supplies in excess of $25,000 must be purchased through competitive bidding.

Section 6(b). We feel this change is unfortunate. There is a critical need for more federal support for the establishment of tribal education codes and tribal departments of education. This need cannot adequately be met through existing 638 grant monies. In addition, we feel that it should be possible for tribes to obtain funds for the development of tribal education codes and tribal departments of education whether or not the particular education plan adopted by the Tribe involves the actual taking over of control of the operation of the schools by the Tribe. For example, funding should be available to assist Tribes in developing appropriate standards in areas of particular concern to the Tribe, including standards relating to the use of the tribal language in the schools and the teaching of tribal culture and social studies whether the schools are actually operated by the Tribe or by the Bureau. Such a grant is not permitted with Section 104(a) funds according to Section 1129(c) of P.L. 95-561. Again, perhaps report language can offer some clarification of intent. But there is a need for funds specifically for this tribal governmental purpose.

Section 7. No comment.

Section 8. It has been suggested that this section be clarified to make clear that voluntary services can be accepted by the local board and school supervisor and, where appropriate, by the agency education superintendent and the agency board. We are very supportive of this provision. We are concerned, however, that it may be susceptible to a cumbersome interpretation.

Section 9(a). No comment.

Section 9(b). We question the reason for assigning funds for stipends for teachers who oversee extracurricular activities by the BIA Area. P.L. 95-561 took the Area education office out of the line of authority between the Agency education superintendent and the central office of OIEP. It might be appropriate to apportion the funds among the Areas. But the funds should be provided to the Agency.

Section 9(c). We support the change in the percentage of rent that can be waived. Facilities cannot be repaired with 10% rentals. Subsection (3) of this section has a serious grammatical problem which will become apparent when the entire sentence is read aloud. It has been suggested that this section be enlarged to clarify that it applies to status-quo employees in voluntary non-pay status, contract employees with less that 12-month contracts, and employees of contract schools.

Section 10(a). We do not believe that it is constitutionally possible for Congress to pass a law which will eliminate rights under a prior law which have already vested. Congress can amend or repeal P.L. 98-511, Title V. But we do not believe that Congress can make its provisions ineffective during the time when it was enacted and prior to the time it is amended.

Section 10(b). No comment.

Conclusion. As stated above, we are supportive of the Congressional effort to resolve the controversies which have surrounded Title V of P.L. 98-511. We believe such an effort is necessary. These comments and suggested changes are offered in the hopes that the effort to clarify this law can be successful and the beneficial provisions of the law can begin to be implemented by the coming school year.

Mr. **Taylor**. Ms. Luna, do you have some additional comments?

Ms. **Luna**. Good morning, Mr. Taylor and members of the committee. As a staff person working with the Navajo Nation's Washington office on the issue of education and pertinent to boundaries and closures as it is addressed in this bill, I have had the opportunity to work with the Navajo Tribe and all the entities that are represented before you, which is the representatives from the Bureau of Indian Affairs, NASBA, as well as the contract schools, as well as at the area and agency level.

We have people that are working with the Bureau as well as the tribal division of education that have formed together to systematically address these issues and concerns and attempt to discuss them, and to develop criteria utilizing the priorities which were set forth by the Navajo Tribal Council through its policies. Therefore, we do have a very formalized mechanism in place, and I believe that the process in this case has been largely ignored.

I think that the results or the outcomes that we are dealing with now, the residue, is something that I think has come by way of short-term efforts, but I think that if we utilized the process I think we would be in much better shape to come out with solutions that are more respective of all the entities, and that would in the long term abort some of these problems that we are faced with. I would just like to emphasize that point, that as part of the tribe's efforts to implement the provision of Indian self-determination, we do have a system in place. If given the chance, I believe that it will effectively work to resolve these matters and problems.

I appreciate the opportunity to make that point before the committee. Thank you.

Mr. **Taylor**. Thank you, Ms. Luna.

Mike Mahsetky and Virginia Boylan I know have met with all of you yesterday and have had a series of meetings with Indian educators. I think Mike or Virginia may have some questions; in fact, I know Mike has.

Mr. **Mahsetky**. One of you or several of you noted that there were five schools that had been closed in Navajo. How many of those five schools have been closed since January of 1984?

Mr. **Eberhard**. Virtually all of them. Let me clarify that for the record. The five schools involved start with Sanostee, which is in the New Mexico portion of the reservation. The closure there was unannounced, very swift. It is partially reopened, in the sense that kindergarten students and first grade students are in attendance at that site. All other grade levels are being bused to other schools or have been assigned to other schools.

The Aztec, NM, BIA school was closed late this spring, again for emergency repairs.

The other three schools that are targeted for closure are Toyei, Pinon, and Snowflake. Based on a meeting that the vice chairman of the tribal council had yesterday with Mr. Fritz and Ms. Garrett, it appears that the formal closure of those three schools will be delayed, at least until the end of the 1985-86 academic year. However, they are going to be closed. There is no doubt about that, and in all three cases there are facilities problems as well as questions about utilization that are identified as the reasons for the closure.

Mr. **Mahsetky**. What kind of consultation occurred in terms of consultation with the tribe or the school boards in deciding whether to close, or the anticipated closure of these schools?

Mr. **Eberhard**. Well, let me take Aztec first because it's probably the easiest. There was no consultation. There was simply an announcement that it would be closed for repairs and students would be bused to Shiprock, NM, to attend school there. The announcement also indicated that the repairs should be done in time for the school to be reopened for the 1985-86 academic year, but there was no consultation of any kind on that one.

On Sanostee the closure was, for all practical purposes, effected prior to any attempt at consultation, at least from the tribe's point of view. I'm sure if Ms. Garrett were still here, she would take sharp issue with me on many of these statements, but from our point of view that was the case. The closure was virtually effected without the opportunity for consultation.

Through the good offices of our congressional delegations and some direct negotiations with the Bureau, we were able to arrive at the current situation, which is, K through L are at the Sanostee site. We believe that the remainder of the facility is not in such a condition that it presents a health or safety hazard to students. We have had an engineering study done at tribal expenses to determine the condition of those facilities. The result of that study is that some repairs are needed, approximately $1 million to $1.5 million. The Bureau's figures for repair are in the multimillions, to make the facility safe and habitable, and as far as we are aware the plan of the Bureau is to walk away from the facility, turn it over to the tribe, but not to permit the facility to be used for a school.

At Pinon—well, Pinon, Toyei, and Snowflake kind of fall into a category on their own. They are each distinct and different, but the facts on consultation are similar. In a very private, off-the-record discussion last August, August 1984, Ms. Garrett and other officials of the Bureau indicated to the tribe for the first time that there was some consideration being given to closure of those schools. Included in that discussion, I might add, were about eight or nine other schools that were being discussed for closure or consolidation.

No indication was given that closure or consolidation was imminent. In fact, quite the contrary impression was left with the tribe. It was more in the nature of, "Well, these are some things we are thinking about. We would sure like to sit down and talk about them in the future but they're not hot items at the moment. We just thought we would let you know we have these thoughts." That was sort of the tenor of the conversation.

As the school year started and progressed, agency education superintendents received verbal and written instructions to close those schools at the end of the academic year. Our belief is that that was done without any further consultation with the tribe. In each of the cases there may be good reasons, excellent reasons, for the actions being taken. What we say about that is that unless we have the opportunity to sit down and participate in those decisions, then the comment or the consultation is meaningless. In fact, that is what has occurred.

There are hundreds of facilities owned by the United States in Navajo country. Many of those are schools. Many of them are in sorry states of repair. The tribe has a legitimate interest in sitting down with the Bureau and developing a realistic plan for dealing with that problem.

It hardly strikes us as good planning, sound education, or good administration for schools to be picked out here in Washington for closure, a casual discussion off the record to be held about that, and then instructions given for the closure. It fails to address the tribe's concerns. It fails, I think, to even address the valid concerns of the U.S. Government. If you've got all those facilities sitting out there, underutilized or in sorry states of repair, there is a legitimate interest in both the tribal and the Federal Government, in figuring out what to do about that and doing that in concert.

Mr. **Mahsetky**. OK. Thank you.

I have a question for Mr. Hoffman regarding boundaries. What is the status of the boundaries, the attendance boundaries, being put into place in Navajo, and do they include contract schools at this point?

Mr. **Hoffman**. This is one of the things I had clarified for me yesterday in our discussions. The boundary system that the Bureau implemented, according to Vern's report in September 1984, does include contract schools. I know of one contract school, perhaps two, who would like to go back to the old system of taking students from wherever they are and, in a sense, headhunting for students.

Well, some contract schools, especially the smaller ones, have been decimated by headhunting of Bureau schools, and we would apply the same principles to ourselves. Let's say a community district that does not overlap Bureau schools works things out, with the assistance of the tribe, with the public schools; but I think it will advance the educational opportunities for students if they are not allowed to bounce around between a Bureau school, a public school, or a contract school; so we generally support having boundaries ourselves. I am not sure if the statute has to be amended to clarify that or what, but we do accept boundaries that reflect our communities.

Mr. **Mahsetky**. OK. There is a provision in the bill that allows for the tribe to petition the Secretary regarding the change in existing attendance boundaries. Would that not address the concerns that were expressed by a number of you in terms of your ad hoc committee making its recommendations in August, and maybe coming after the BIA has started to implement their boundaries?

Mr. **Hoffman**. I think what is going to be most effective is having a system. After you establish boundaries, you have the lines on a map or whatever and people know where things are at. When kids need to move from one school to another for any number of reasons—programmatic reasons, cultural reasons, family reasons—that there be a system that allows that to happen, that supports the student's educational opportunities, and not for some other reason. We don't see the Bureau having a system, and that's what is missing. We think the Navajo Tribe's proposed service attendance area is very good, and that is what we want to see implemented.

Mr. Mahsetky. OK. One last question from me is that, regarding the chapter 1 funds, I understood you to say that there is no restrictions under chapter 1 in terms of its use for summer school programs?

Mr. Hoffman. Well, the restrictions are the restrictions found for chapter 1 during the regular school year. Chapter 1 does not say you can't have a summer school program. It says if you have one, you must meet all the criteria of chapter 1. Navajo contract schools which I am familiar with, have had summer schools funded by chapter 1 for years. It is this past year that the Bureau has made that extremely difficult and, for a couple of schools, impossible to have that program. So, for whatever direction has to be given to the Bureau, you can't have it both ways: You can't say, "We're not going to give you money out of ISEP," or, as Vern mentioned, "You can't use your ISEP funds for summer school," and then you can't use chapter 1 either. It's kind of saying, "Don't educate your kids through the summer," especially those who need it.

Mr. Mahsetky. What are the bill's guidelines or regulations regarding the use of chapter 1 funds, since they are the only flow-through agency?

Mr. Hoffman. I'm not sure that they have any published rules. They do have State rulemaking authority. I believe they are considered the 51st State on this issue, but in examining at least the State guidelines for Arizona, New Mexico, and Utah, which encompasses parts of the Navajo Reservation, they have no restrictions on summer schools. We don't find any basis in law or regulation for the Bureau to establish a restriction in this area, so we don't really understand where they are coming from except as a means of reducing Federal expenditure for Indian education. That is what we see as the purpose behind that restriction.

Mr. Mahsetky. OK. Thank you.

Ms. Boylan. I have a followup on that. The chapter 1 funds these schools propose to use for summer programs are part of their year's allotment of chapter 1? I mean, how does that work? I mean, if they don't use it for the summer program, it goes back to the Bureau? Is that the bottom line?

Mr. Hoffman. If I understand the system, and it's a little different because it doesn't run on the Federal fiscal year, it runs on a school year basis—we get our contracts for July 1 through June 30—I think it's tied to this concept of advanced funding as you find in the proposed amendment here. The moneys for summer schools are usually funds that have been left over from the regular program year, which the Bureau then reprograms and redivides per a reasonable policy. We have no problems with how they have done that in the past; and these funds then can be used legitimately for summer school, so it's a reprogramming of their allotment from chapter 1. It's not like going to chapter 1 and asking them for additional money. It's part of their State allotment.

Ms. Boylan. So, if a school has the chapter 1 moneys and is not permitted to use them, what happens to those moneys?

Mr. Hoffman. Well, the school only gets chapter 1 moneys by a proposal for a summer school program. Those are submitted, sort of like on invitation, during the year when the Bureau identifies its carryover, its moneys. Once that money is available, they say:

"Well, we can afford this much for your school and these different schools," but this year the proposals went in and they said: "Wait a minute. We're not funding summer schools," and then we got into problems with that.

Ms. BOYLAN. Thank you. That clarifies it.

Mr. TAYLOR. Mr. Eberhard, I see you have one additional statement you would like to make.

Mr. EBERHARD. Yes; thank you, Mr. Taylor. I just wanted to offer a further response to Mr. Mahsetky's question on the school boundary problem and why the provision for petitioning for tribally adopted boundaries doesn't address the Navajo situation.

Essentially, we believe that we will have tribally adopted boundaries in the next 12 months or so. If the new school year starts in August and boundaries are imposed by the Bureau, and for the following year new boundaries are going to be imposed, each of those actions—whether it is from the Bureau or from the tribe—is going to entail a certain amount of dollar cost and a fair amount of community upheaval, if you will, confusion, and other kinds of problems.

All that we are saying is that we have got the message. We know we have to do boundaries. We agree to do boundaries. We think it's good educational policy to do boundaries. We are in the process of doing that. A year's grace period would benefit the tribe's educational program. We would have tribal attendance boundaries. We think it would also reduce Federal costs, and we know it would reduce confusion and chaos in the Navajo communities that are going to be affected by boundary changes. That is really all we are saying about it.

I think that part of what happened at the tribal level was that, with the amendments last year and then the moratorium, there was real confusion programwise about whether boundary changes had to be worked on and implemented over the past 6 to 12 months. There is now a clear understanding that that should have been going on. It has been going on, and it will intensify. I think we will have tribally sponsored boundaries probably before the end of the 1985-86 academic year, ready for implementation in the 1986-87 year.

I don't really know, but I would suspect there are other tribes that have similar problems on this issue. We are really just suggesting that if we are going to be self-determining, let us be self-determining. Let us develop our own boundaries. Don't waste your time and money, and don't cause all this unnecessary confusion in the communities. Twelve more months is not going to entail great Federal cost.

[In regard to the above colloquy regarding school attendance boundaries, the following letter, dated July 18, 1985, was received from Mr. Eberhard:]

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN NAVAJO TRIBAL COUNCIL

1985 JUL 18 PM 1:26

July 18, 1985

Mr. Michael Mahsetky, Staff Attorney
Senate Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510

RE: S .1398

Dear Mr. Mahsetky:

Please find enclosed a copy of the policies which have been developed by the Navajo Nation for the establishment of school attendance boundaries. In light of the questions raised at the July 17 hearing on S. 1398, we are requesting that these policies be made a part of the hearing record.

Thank you for your concern and hard work. Please do not hesitate to contact either myself or Alice Luna at 775-0393 if you have any questions or need additional information.

Sincerely,

Eric D. Eberhard, Deputy Director
Navajo Nation Washington Office

c.c. Alice Luna

Enclosure

NAVAJO EDUCATIONAL SERVICE AREA SYSTEM POLICIES

I PURPOSE

The purpose of these policies is to provide the foundation for the establishment, revision and operation of a system of nonoverlapping, geographically specific areas within which the associated schools, dormitories and special purpose programs serving the Navajo Nation will be expected to meet certain service obligations with regard to school-age persons residing within those areas. This system, hereinafter referred to as the "Navajo Educational Service Area System" or "NESAS", is intended to provide a stable basis for identification and enrollment of all eligible students within the Navajo Nation in appropriate educational programs according to their individual needs and legal rights. It is also intended to minimize to the greatest extent possible the duplication of services and expenditures among publicly funded schools serving the Navajo Nation. Finally, NESAS is intended to facilitate the identification and location of school dropouts and potential dropouts so that they may be appropriately served.

II DEFINITIONS

A. As used herein:

1. SERVICE AREA means that geographical area assigned to a school in the Navajo Educational Service Area System (NESAS) for which the school is obliged to provide specified services to students residing within the NESAS. No service area shall overlap the comparable service area of another school serving the same grade level students. It includes one or more of the following areas:

a. SCHOOL SERVICE AREA means that geographical area, circumscribed by a school boundary or boundaries, assigned to a school in the NESAS for which the school is obliged to provide services, including appropriate transportation services, to all students who have not completed the grade levels provided by that school.

c. DORMITORY SERVICE AREA means that geographical area, circumscribed by a dormitory boundary or boundaries, assigned to an honor or on-reservation residential facility, operated to facilitate attendance at a school in the NESAS, for which the residential facility is obliged to provide residential care services for any resident student of an age or grade level served by the related school(s), provided that the student meets the dormitory enrollment criteria described elsewhere herein.

d. SPECIAL PURPOSE SCHOOL/PROGRAM SERVICE AREA means that geographical area assigned to a school in the NESAS, identified by the name of the Special Program offered, and circumscribed by a Special Program boundary or boundaries, within which the school is obliged to provide a specialized educational or therapeutic program to any student residing within the service area who meets the enrollment criteria specified for that program. Special programs may be given this designation only by the Education Committee of the Navajo Tribal Council, through procedures described elsewhere herein.

2. SCHOOL means any institution, entity or program which meets the definition of a school for the purpose of the applicable compulsory attendance requirements of the Navajo Tribe or any of the states serving Navajo students.

3. DORMITORY means a residential care program operated for qualified Indian students, grades one through twelve, in order to enable them to attend school. A dormitory may be operated in one or more of the following relationships to schools:

- a. as part of a single boarding school
- b. as an honor dormitory, in order to permit high-achieving students to attend a special school program
- c. in support of attendance at a public school program
- d. in support of attendance at a federally-funded school program

4. SOCIAL SERVICE PLACEMENT means an official decision by a court or social service authority or a written referral by a licensed psychologist, psychiatrist or social worker to enroll a student in a specified school.

5. LEGAL GUARDIAN means any person or persons appointed by a court, civil or Tribal, to have custody and care of a minor.

6. PARENT means a natural parent having legal custody of a minor child.

7. RECRUITMENT means any action or activity designed or intended to encourage or persuade students to enroll in a particular school or dormitory.

8. STUDENT RESIDENCE means the domicile in which a student actually resides for the majority of the time during the school year when he or she is not at school.

9. DROPOUT STUDENT means any person between six and eighteen years of age who is not enrolled in any school, or who has been dropped from the rolls of any school for non-attendance, during the regular school year and who has not re-enrolled in any school, and who has not earned a high school diploma, a G.E.D. certificate or the generally recognized equivalent thereof.

10. EXPELLED STUDENT means any student who has been officially expelled from any school as the result of disciplinary actions and in accordance with appropriate due process procedures.

11. SUPERINTENDENT means the Superintendent of a public school district or any of the five Bureau of Indian Affairs Agency Superintendents for Education within the Navajo Area of the Bureau of Indian Affairs, or the chief administrative officer of a contract school.

12. SPECIAL PURPOSE SCHOOL/PROGRAM means a school or program which is formally recognized by the Education Committee of the Navajo Tribal Council as providing educational and/or other services which are not otherwise generally available.

13. NOTICE means written notification sent by certified mail. In cases where the intended recipient of the notice cannot read and write in English, "notice" shall additionally mean verbal notification of the intended recipient in person by an appropriate official who is fluent in the Navajo language.

III COMPULSORY SCHOOL ATTENDANCE POLICY

A. With regard to Navajo persons affected by these policies, the provisions of 10 NTC § 118 shall apply.

B. With regard to non-Navajo persons affected by these policies, the relevant statutes of the respective states within which they reside shall apply.

IV SERVICE OBLIGATION OF SCHOOLS

A. Enforcement of the Navajo Educational Service Area System and compulsory school attendance is a shared responsibility of the school boards, local and agency school officials, the Navajo Division of Education, the Education Committee of the Navajo Tribal Council and the tribal judicial system.

1. Each school which is assigned a service area in the Navajo Educational Service Area System shall have the primary obligation to provide or arrange for delivery of the following services to all students within its service area who are of the ages served by that school:

a. To conduct an annual house-to-house census of all students who are of the ages three through twenty-one (3-21) as of December 31st of the count year who live within its service area, recording and reporting the names, chronological age, Tribal affiliation and Navajo Tribal census number (if applicable), last school attended and grade completed, and the school currently enrolled in by each such students, or the fact that the student is not so enrolled. This information is to be reported to the Navajo Division of Education by the last day of October of each school year, for that school year.

(1) School districts, and separate schools whose service areas overlap because they serve differing age groups of students, may effect cooperative arrangements to combine census and placement efforts, submitting joint reports on the students within any given area of overlap.

b. To place all handicapped students who are eligible for services under applicable laws in appropriate service programs.

c. To assess the special service needs of all students for the unique services offered by the Special Purpose Schools or Programs identified within the NESAS and to refer students with these needs to the appropriate Special Purpose School or Program

d. To provide to all accessible students of the ages served by the school who live within its service area the opportunity to attend the school on a day basis.

e. To provide support and extra-curricular school services to all eligible students in accordance with applicable local, State, Federal and Navajo Tribal Educational Standards in force during the current school year.

f. To make a consistent, documented effort to assure that all students of the grade levels served by the school who live within its service area enroll in and regularly attend some school. Wherever efforts to secure such enrollment and attendance have failed, to report this fact in an expeditious manner, with full school census data regarding the student(s) involved, to the Navajo Tribal Division of Education for enforcement of the Navajo Tribal Compulsory School Attendance Policy.

g. To restrict expenditure of public funds for transportation of students for the above purposes to the transportation of those students who live within its service area.

2. Each dormitory which is assigned a service area within the NESAS shall have the primary obligation to provide or arrange for the delivery of the following services to all students within its service area who are of the ages served by that dormitory:

a. To provide to all eligible students of the grade levels served by the dormitory who live within its service area who meet the criteria for dormitory enrollment the opportunity to attend school on a residential basis, including transportation to and from the student's home and the school consistent with the allocation of funds for this purpose in the Bureau of Indian Affairs Indian School Equalization Program and any applicable local, State, Federal and Tribal standards for such transportation.

b. To provide all such students who enroll in the dormitory with residential care services in accordance with the applicable state, federal and tribal standards for such care in force at the time.

c. To restrict expenditures of public funds for transportation of students for the above purposes to the transportation of those students who live within its dormitory service areas.

ENROLLMENT CRITERIA

A. The following shall be the enrollment criteria for all schools within the NESAS:

1. Children shall attend the day schools within whose service areas they live on a day basis whenever feasible.

2. Children who live more than a one hour bus ride from a day school or who meet one or more of the conditions listed in subparagraph 3 following shall be eligible to enroll in the dormitory within whose service area they live.

3. The following types of children shall be considered to meet social criteria for dormitory enrollment:

a. Those who are rejected or neglected and for whom no other suitable plan can be made.

b. Those who belong to a large family with limited income and consequently, in the professional judgement of a social worker, cannot be given proper minimum care by the family.

c. Those who behavior problems are too difficult for solution by their families.

d. Those whose well being is imperiled due to family behavioral problems.

e. Those having siblings or other close relatives enrolled at the boarding school who would be adversely affected by separation.

4. A school may accept students residing outside of its established service areas if space is available and one or more of the conditions in section Part VII G are met.

5. Before a school accepts a student residing outside of its established service area the Superintendent for the school within whose service area the student actually resides must certify that one or more of the conditions are met as specified in the following section Part VII G. Such certification must be in writing and be attached to the student's enrollment application form. School officials are required to maintain these certifications on file for audit purposes.

B. The following shall be the enrollment criteria for all honor dormitories within the NESAS:

1. All students who do not live in the designated service area of a particular dormitory must follow procedures described below in order to request an exception before they can be enrolled in an honor dormitory program. Honor students residing in these honor dormitories shall meet the following criteria:

a. To enroll, the students must have a B average or better during the preceding school year.

b. During the school year, to retain residence in the honor dormitory the student's grade average shall not fall below C- for any single grading period.

c. Student behavior shall comply with a stringent code developed by Bureau staff in consultation with local and agency school boards and public school district representatives.

d. Waivers of these criteria may be recommended for good reason on a case by case basis by the appropriate BIA Agency Superintendent for Education, and approved by the Executive Director of the Navajo Division of Education.

2. Residence in these dormitories is to be regarded as a privilege rather than a right. Programs are to give high achieving students the opportunity to learn and compete with public school students in public school programs, generally off the reservation.

3. Public school districts are encouraged to expedite the enrollment of qualified Navajo students in the public school districts which are served by the dormitories. Prompt issuance of Certificates of Convenience by the sending school districts are requested by the Navajo Tribe.

C. Each Special Purpose School and Special Purpose Program which is assigned a service area within the NESAS shall have the primary obligation to provide or arrange for delivery of the following services to all eligible students within its service area who are of the ages served by that Special Purpose School or Special Purpose Program:

1. To provide the special services offered by the school or program to all eligible students within its service area in accordance with the students' needs and applicable tribal, state and federal laws, regulations and standards.

2. To restrict the expenditure of public funds for transportation of students for the above purposes to the transportation of those students who live within its service area.

D. Each Special Purpose School and Special Purpose Program shall establish its own attendance criteria based upon the kinds of services it offers and all applicable tribal, state and federal laws, regulations and standards governing the provision of such services, and shall provide a copy of such criteria to the Navajo Division of Education for dissemination to those concerned.

VI RECRUITMENT OF STUDENTS

A. Any recruitment of students by or on behalf of a given school outside its service area is forbidden.

VII PARENTAL OPTIONS

A. It is the policy of the Navajo Tribe that "parental involvement in education includes the right of parents to choose the type of school and educational program in which their minor children shall be educated. Choices of day or residential attendance and of federal, state, community controlled or private school are appropriate parental options". Allowing for individual exceptions based on eligibility criteria, it is also Tribal policy that:

1. Day school is preferable to boarding school; and
2. Five day boarding is preferable to seven day boarding; and
3. To the greatest extent possible, placement of students should follow these guidelines.

B. It is not in the best interests of the Navajo Tribe, however, to allow school systems to subsidize with public funds unreasonable parental choice outside the spirit of these guidelines. Consequently, parents' options to send their child(ren) to a school outside the service area(s) in which they live may be exercised only if done at no appreciable additional public cost for transportation, or where no significant operational inconvenience or complication is caused or a valid exception is granted in accordance with Part IX of these policies.

C. Examples of the exercise of such options at no appreciable additional public cost or significant operational inconvenience include but are not necessarily limited to the following:

1. Parental or family transportation of the child(ren) to a pick-up point within the service area of the school desired.

2. A cooperative arrangement between the school within whose service area the student lives and the desired school which will allow for transfer of the student from one school bus to another at some point at which normal school bus routes for each school may meet.

D. The criteria for placement of a student in a school other than the one within whose service area the student lives shall be based upon the student's need for services not available at the school(s) of residence, or upon a formal referral from Social Services.

E. To the greatest extent possible, such choices have already been incorporated in the Navajo Educational Service Area System, by assuring that every part of the reservation is included in all three basic types of school service area (day school, boarding school, and peripheral dormitory areas), and by providing extended service areas for special schools and Programs. Consequently, any Navajo student who meets the entrance requirements of any of these school programs should already live within the service area of such a program and be automatically eligible to attend there.

F. Within such limits it is the position of the Navajo Tribe that any Navajo student shall receive a free, appropriate, public education at a publicly funded school which serves the Navajo Nation.

G. Valid reasons for which exception will be granted for a child to enroll in a dormitory or school other than the one within whose service area he or she lives are as follows:

a. Education Criteria

(1) Day Schools in the local service areas including the student's home are severely overcrowded.

(2) No suitable program is available in the schools or dormitories within whose service area the student lives which will meet clearly identified special needs of the student.

(3) Schools in the local service area do not offer special vocational/preparatory training necessary for gainful employment.

(4) Schools in the local service area do not make adequate provisions to meet academic deficiencies or linguistic/cultural differences.

(5) There exists a clearly identified potential benefit to the student.

IX STUDENT TRANSFERS

A. The Navajo Tribal Educational Policies specifically discourage transfers of students from one school to another during the school year, particularly when such moves jeopardize student academic progress. However, transfers can be made when justified for the benefit of the student.

B. Transfers cannot be justified in situations where the primary reason for transferring is to avoid disciplinary action, receipt of failing grades, or retention in grade level, or to penalize a school by removing a student from its rolls due to a conflict with the school or school officials. Transfers are specifically prohibited in these situations, as other, more appropriate avenues of redress are available.

X DISPUTES AND APPEALS

A. It shall be the policy of all Schools, Dormitories and Special-Purpose Schools and Programs within the NESAS to thoroughly consider all aspects and circumstances of each individual student in determining the student's eligibility for enrollment in accordance with these policies and the best interests of the student. In the event that a mutually agreeable decision on placement for a particular student cannot be reached among the parent(s) or legal guardian(s) and the concerned school Principal(s), the resulting dispute shall be resolved through procedures established by the Education Committee of the Navajo Tribal Council.

XI NAVAJO AREA-WIDE DROPOUT TRACKING AND PREVENTION SYSTEM

A. It is the policy of the Navajo Tribe to develop appropriate measures to decrease the dropout rate and to reduce absenteeism.

XII ESTABLISHMENT OF SERVICE AREAS

A. There shall be a separate service area established for each school, dormitory, special purpose school and special purpose program within the NESAS. The boundaries of each service area shall be established in such a manner as to:

1. Make optimum feasible use of each school and dormitory facility serving the Navajo Nation.

2. Conform where possible to natural and political boundaries of existing communities.

3. Facilitate the bussing of day students to and from school over the shortest and/or least time-consuming routes.

4. Prevent and /or eliminate duplication of services and overlapping responsibilities between comparable programs serving the same grade levels.

B. Once service areas have been officially established for all existing schools, dormitories and special purpose schools and programs covered by the NESAS, service areas for new schools, dormitories and special purpose schools/programs, and revision of existing service areas shall be developed in accordance with the procedures for Service Area Revision, Part XIII below.

C. The education Committee of the Navajo Tribal Council shall have the authority to establish any and all service areas within the Navajo Educational Service Area System.

XIII SERVICE AREA REVISION

A. An official review of established boundaries shall be conducted and revision of such boundaries be considered whenever, in any school in the Navajo Education Service Area System, one of the following situations exists:

1. The enrollment declines to a point at which potential closure of the facility is considered by the school officials charge with the responsibility for such decisions for that school.

2. The physical condition of the facility, or any factor regarding the adequacy of the facility or its supporting systems, causes potential closure of the facility to be considered by the responsible school officials.

3. The consolidation of two or more schools is being considered by the responsible school officials.

4. The enrollment increases to a point at which the school cannot meet applicable standards for health, safety and size of student groupings using all available permanent and portable facilities as they may be refurbishable, without constructing new permanent facilities.

5. Expansion of an existing facility or of the grade range of students served by the school is being considered by the responsible school officials.

6. Construction of a new facility or organization of a new school is being considered.

B. In each such case, the responsible school officials shall give notice to the Executive Director of the Navajo Division of Education a minimum of one calendar year in advance of the date for an official decision regarding the closure, consolidation, expansion or new construction or establishment of any school and/or dormitory facility, and shall give priority consideration to any recommendation of the Navajo Tribe regarding the impact of the proposed changes on surrounding schools and/or dormitories in arriving at a decision in the matter.

C. The Education Committee of the Navajo Tribal Council shall have the authority for final approval of revised service area boundaries. The Education Committee shall provide an opportunity for any potentially affected school, dormitory, special purpose school or program or school district to be heard prior to final adoption of the revised service area boundaries.

XIV TUITION

A. When a Navajo student wishes to enroll in a school other than the one determined as proper according to school boundaries and his or her place of residence, but is unqualified to do so under any other policy or procedures set forth herein, such student may do so if he/she or his/her family is willing and able to pay tuition equal to the amount of ISEP funds he/she would generate under a normal student count procedure.

B. Non-Indian students who live within the service areas of federally operated or funded day school program serving the Navajo Nation shall be eligible to receive a free, appropriate public education at such schools on the same basis as Indian students residing in the same service area. This shall be provided wherever denial of such services would require the expenditure of appreciable additional public funds to provide transportation to a state public school.

C. Wherever feasible, intergovernmental agreements shall be effected whereby tuition cost for such students may be paid by the state public school district within which the federally operated or funded school is located, by enrollment of the student on the public school rolls and out-placement in the federally operated or funded school for services. Until such agreements are effected, no tuition shall be charged to parents of students for receipt of educational services from the federally operated or funded school within the service area of which they live. In no case shall the tuition charges exceed the amount of funds which the student's enrollment in the public school generates for the public school district.

XV JOINT PLANNING OF SCHOOL FACILITIES

A. Pursuant to the federal obligation to consult with the Navajo Tribe on all matters related to education as well as federal policies relating to Indian control of Indian education and the natural and legal authority of the Navajo Tribe with regard to educational facilities located in Navajo Indian country, there shall be a Joint Planning Team for Navajo Education.

B. The function of the Team in this regard will be to make recommendations to the Navajo Tribal Government on all matters relating to the planning of educational facilities in the Navajo Nation.

C. This planning must occur in various levels within the tribal structure from the local to the central tribal levels. For the consideration of certain proposals the Team may provide for additional representation which might be requested from one or more of the groups listed or from other groups from time to time. Representatives should seek guidance from their respective organizations on specific matters that arise. The Team shall consider all proposals including but not limited to the following:

1. The BIA Facilities Improvement & Repair priorities
2. New construction proposals of the Bureau of Indian Affairs and public schools serving Navajo children.
3. Proposals for new school starts of public, BIA-funded and private schools.
4. School consolidation proposals.
5. School closure proposals.
6. School expansion proposals including major bus route expansion.
7. The need for special need institutions such as juvenile diagnostic centers, drug and alcohol abuse centers, solo parent facilities, etc.
8. All other matters pertaining to the Navajo Educational Service Area System.

XVI ESTABLISHMENT OF IMPLEMENTATION PROCEDURES

A. The Education Committee of the Navajo Tribal Council shall have the authority to establish procedures for the implementation of the Navajo Educational Service Area System, subject to applicable tribal laws.

Mr. **Mahsetky.** I have a twofold question, and that is, Is there Bureau representation on your ad hoc committee on boundaries? If there is, are they aware of your concerns about not having your attendance boundaries in place before they impose theirs?

Mr. **Duus.** Yes; there is Bureau representation on the task force that's working on the boundary system, and they are also aware of the situation. However, they are also line officers in the Bureau education system and when they get their marching orders, they have to march. I think they are expressing the concerns at the Washington level but the Washington level is where those directions have come from.

Mr. **Mahsetky.** Is there any indication that the Washington office of Indian education programs would be sympathetic to consider holding off in implementing those boundaries for another year?

Mr. **Duus.** We have not received any indication along those lines. At the line officers' meeting that occurred back a couple of months ago down in Scottsdale—it was a nationwide line officers' meeting for the Bureau—I would say it was made very clear that the Bureau's boundaries and the whole system was going to be established this coming school year. It was, I would say, a very adamant direction; that is my understanding.

Mr. **Mahsetky.** Thank you.

Ms. **Boylan.** Another followup question: If these standards are not imposed this fall, the Bureau standards, you just go on like you are, and that is sort of a catch-as-catch-can type boundary situation, or—I mean, I don't know if it is——

Mr. **Duus.** Yes; I would say that if a waiver were given for another year, it would be a status quo type of situation, which really isn't all that chaotic. I mean, student enrollment on Navajo doesn't jump around too much, in effect. It's a fairly stable system.

Ms. **Boylan.** Thank you.

Mr. **Taylor.** Well, I thank you all very much for your testimony. I don't have any questions of my own.

Mr. Savilla was unable to make it to the hearing this morning. He has provided us with a prepared statement, and that will be made a part of the record.

[See p. 65.]

Mr. **Taylor.** In addition, I understand that there may be some additional questions to the Department of the Interior in writing. If such questions develop, why, the Department will be hearing from us.

The committee will stand adjourned.

[Whereupon, at 11:30 a.m., the committee recessed, to reconvene at the call of the Chair.]

APPENDIX

Exhibit 1: Navajo tribal position statement on closure and consolidation plans and related material

Exhibit 2: Letter from Peterson Zah, chairman, Navajo Tribal Council, to Deputy Assistant Secretary for Indian Affairs John W. Fritz, with enclosures

---

EXHIBIT 1: ATTACHMENT A

Navajo Tribal Position Statement on Closure and Consolidation Plans

POSITION PAPER

Planning for Change in the BIA School System -- The Need for a Comprehenisve Approach, with Full Tribal and Community Participation

Prepared for: Peterson Zah, Chairman,
Navajo Tribal Council

Date: March 28, 1985

This paper expresses the position of the Navajo Nation regarding the appropriate procedures and considerations which should be applied to all planning for major program changes within the BIA school system, particularly changes involving expansions, consolidations and closures of schools and decisions significantly affecting the attendance area associated with a school. The considerations discussed here, however are also applicable to other significant proposed changes in the system. The statements of position expressed in this position paper are derived from Navajo Tribal Law, from positions adopted by the Tribal Council, the Education Committee of the Tribal Council and by the Chairman of the Tribal Council. In addition, this paper relies upon the rights of the Navajo Tribe and of local schools and communities as established in Federal law and regulation and in the policy of the Bureau of Indian Affairs.

I. Federal Law and Policy

For over a decade Federal law has recognized the importance of affording to Indian tribes, Indian communities and Indian parents an opportunity to exercise control over the education of their children, to participate in the significant decisions that are made about how and where their children will be educated. The Self-Determination and Education Assistance Act, adopted in January of 1985 contained specific findings by the U.S. Congress that:

> "/P/arental and community control of the education process is of crucial importance to the Indian People." P.L. 93-638, §450(b)(3)

The Self-Determination and Education Assistance Act also contained statements of policy adopted by the Congress and incorporated into law, including:

> "The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities." P.L. 93-638, §450a(a).

and:

> "The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the INdian people through the establishment of a meaningful Indian self-determination policy which permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of those programs and services. P.L. 93-638, §450a(b).

The law and subsequent regulations made clear that this right to effective and meaningful participation in the planning, conduct and administration of programs was not limited to programs specifically contracted by a tribal organization, but applied to all federal programs serving Indian people, including those directly operated by the BIA.

Three years later, in 1978, Congress adopted P.L. 95-561, the Education Amendments of 1978. Title XI of that law contained a specific provision regarding Indian control of the education process:

> "It shall be the policy of the Bureau, in carrying out the functions of the Bureau to facilitate Indian control of Indian affairs in all matters relating to education." P.L. 95-561, §1130.

The Bureau of Indian Affairs adopted regulations implmementing P.L. 95-561 which reinforce the thrust of these Congressional statements of policy. Under these regulations, it is the right of the Navajo Tribe, the Navajo People and local Navajo school boards to be consulted by the Bureau of Indian Affairs regarding the planning of and changes in educational policies, services and programs. 25 CFR §32.4(a)(1)and(2). Under the regulations, the Bureau of Indian Affairs commits itself to

> "ensure that Indian Tribes ... fully exercise self-determination and control in planning, priority-setting, development, management, /and/ operation ...in all aspects of the education process", 25 CFR §32.4(a)(3)

and to:

> "ensure that each...local school board shall be authorized and empowered to function as the policy-making body for the school". 25 CFR §32.4(a)(4).

The Bureau pledged to:

> "assume an assertive role in coordinating comprehensive support for Indian ... students ... in education, mental and physical health, juvenile justice, job training, including apprenticeship programs and other related Federal, state and local programs and services." 25 CFR §32.4(k)(2)

The BIA has committed itself to:

> "promote the community school concept by encouraging year round multi-use of educational facilities, equipment and services for Tribal ... and community development"; 25 CFR §32.4(o)

to:

> "provide day and residential educational services as close to an Indian ... student's home as possible"; 25 CFR §32.4(p)

to:

> "implement procedures /and/ practices ... to ensure flexibility in the exercise of local Tribal ... options, and provide for input in periodic reviews ... and revisions to meet changing needs and circumstances"; 25 CFR §32.4(q)(2)

and to:

> "ensure that the needs of the students and Tribal ... community will receive first priority in the planning ,,, /and/ operation ... of Bureau schools and residential facilities, rather than other considerations" and "maintain all schools and residential facilities to meet appropriate Tribal, State or Federal safety, health and child care standards". 25 CFR §32.4(s) (1) and (2).

These policies and regulations taken together constitute a strong and legally binding commitment on the part of the Bureau of Indian Affairs to work with Tribes and Indian communities in developing plans for the bureau educational system which reflect the needs and priorities of those communities and which contribute to the overall social , educational and economic wellbeing of the communities involved.

The Office of Indian Education Programs, in 1981, recognized that the Bureau of Indian Affairs has an obligation to make provision for the impact of school closures and consolidations on the economic and social life of the communities where the schools are located. In the Navajo Area School Survey, the then director of OIEP recounted that boarding schools were established on the Navajo reservation in part to form the hub around which a community would grow. Establishment of the boarding schools as community centers was part of a deliberate attempt by the BIA to change the Navajo way of life from scattered individual families to communities. Dr. George Sanchez, the educator hired by the BIA to recommend the future development of Navajo education recommended:

> "If the Navajos are to have basic community services and activities, if, indeed, they are to have a community life, the school must serve as the community center." Quoted at p.8, Navajo Area School Survey.

Regarding school closures, the report concluded:

> "It is one thing to close a school, it is another to close down the hub of a community. ...It is a matter of record that the Federal Government knew that it was creating community centers when boarding schools were planned and constructed on the Navajo Reservation. Consequently, it seems only fair that the Federal Government place some priority on the community situation when it considers closing some of the boarding schools." Navajo Area School Survey, pp. 8, 46.

The report recommended that plans to close boarding schools be preceded by carefully validated on-site reviews, and that information be gathered and validated prior to making such a decision regarding at least:

> "1. Condition of existing buildings
> 2. Extent of and condition of roads
> 3. Economic-social-educational needs of children
> 4. Curriculum needs
> 5. Boarding needs
> 6. Community Demographic profile
> 7. Attitude of local community toward proposed modification of school ". Navajo Area School Study, p. 48.

In the last session of Congress, P.L. 98-511 was adopted, amending and adding to the provisions of P.L. 95-561. In the appropriations legislation for that same year, Congress placed a moritorium upon the expenditure of funds to implement Title V of that act. However Congress did not delay the effective date of the law nor repeal any of its provisions. Therefore, the mandates and prohibitions contained in that legislation are law and are binding upon the Bureau of Indian Affairs. P.L. 98-511 specifically provides a number of criteria which must apply to the process by which the BIA determines to consolidate or close any of its schools. The law provides, among other requirements:

> "Prior to ordering any such school closing or consolidation, the Secretary shall insure that a study is made of each Indian child's educational and (where applicable) social needs and that adequate alternative services are guaranteed. Such a study shall include a descroption of the consultation conducted between the potential service provider, current service provider, parents, tribal representative of the tribe involved, and the Director of the Bureau of Indian Affairs Office of Indian Education Programs, with regard to such child.

> "Prior to taking any action to close or consolidate any such schools, the Secretary shall make a full report to Congress describing the plans made ... and the study and consultations undertaken .... No action may be taken in furtherance of any such proposed school closing or consolidation (including any action which would prejudice the personnel or programs of such school) until the end of the academic year following the academic year in which such report is made" P.L. 98-511, §502(e)(g)(3)and (4).

P.L. 98-511 makes clear that:

> ".../N/o school operated by the Bureau of Indian Affairs on January 1, 1984, may be closed or its program curtailed unless done according to the requirements of this subsection.... ." §502(e)(g)(1) .

The only exception is a closure or consolidation requested by the tribal governing body or by the local school board concerned. Thus, regardless of the moritorium on funding Title V of P.L. 98-511, the Bureau is prohibited from taking action in support of a closure of consolidation of any school unless it has concurrence of the Tribe and local school board or unless it conducts the studies as required, and makes a report to Congress in the academic year prior to the year in which the program is to be closed or consolidated. Arguably, in the absence of funding authority the Bureau can accomplish a closure or consolidation ONLY if the Tribe and local school board concur.

II. Tribal Law and Policy

The Navajo Nation has adopted tribal laws which prescribe the process of consultation and the degree of community and tribal involvement which must occur if the Tribal government is to lend its support to a major change in an educational program or facility, such as the closure or consolidation of a school. The most pertinent tribal code sections provide:

> "The Navajo Division of Education shall establish joint planning efforts with schools and school systems in the Navajo Nation and with those educational institutions receiving federal funding to educate Navajo students to accomplish the following provisions:
>
> A. When planning construction, expansion, consolidation or closure of any school or school residential unit serving the Navajo Nation, the decision-making entity shall, from the initial stages, consult with the affected school boards and school board organizations, the Education Committee of the Navajo Tribal Council, the Navajo Division of Education, affected chapters and local communities and with those students, parents and staff who use the facility; and shall incorporate the desires of these parties into their plans to the greatest

and:

> "(a)(1) It shall be the policy of the Navajo Tribe that any agency, organization, or group proposing and planning a new school facility, expansion or change-over of an existing facility, a change in school site, a transfer from Bureau to public school operation, a change from boarding to day school operation, establishment or changes of bus routes, or any other change in educational policy or operation which may affect the lives of local citizens shall consult with the Navajo Tribe for full discussion of such proposed changes.
>
> "(2) Further, any agency, organization or group proposing such changes shall consult and discuss such plans with appropriate Bureau of Indian Affairs staff, with the Education Committee of the Navajo Tribal Council, with local Chapter officers and with the people of the communities to be affected, either directly or indirectly, with local school boards and with the Navajo Division of Education.
>
> "(b) It shall also be the policy of the Navajo Tribe that official endorsement of such changes or proposals shall be withheld until every effort has been made by the responsible agency, organization or group to obtain the approval and endorsement of the Navajo people affected, and the tribal laws regarding the planning and undertaking of such change or proposal have been complied with. Such endorsement of proposed plans or changes shall be obtained prior to the implementation of such educational programs."
> 10 NTC §2, as amended by CN-61-84.

The Navajo Tribal Code sections cited above were adopted or amended as part of the comprehensive package of Navajo Education Policies adopted by the Navajo Tribal Council in November of 1984. Development of these policies involved the participation and involvement of representatives of BIA schools and educational programs, as well as representatives of public schools, private schools, contract schools and educational organizations. The policies, including the two above-cited policies did receive formal approval from the Navajo Area Director of the BIA in January of this year.

While the consultation process mandated by federal law and by Navajo Tribal law is comprehensive, it need not be cumbersome. Nor need it serve merely to delay controversial changes in the BIA education system. In fact the process of consultation can be used dynamically and creatively to begin a process of effective planning for the future development of the BIA-funded education system in the Navajo Nation.

In August of 1983 the Chairman of the Navajo Tribal Council directed a letter to Ken Smith, then Assistant Secretary - Indian Affairs.

The letter was in response to a request from Assistant Secretary Smith that Chairman Zah identify the process of consultation which he felt was needed in regard to proposed significant changes in the BIA education system, such as the consolidation or closure of schools. The Chairman's letter described the then-existing Tribal law regarding consultation on proposed education program changes. The letter then went on to propose that the Navajo Nation, the BIA and the public schools commence a process of joint planning for the development of the education system within the Navajo Nation. This process could meet the requirements of consultation within the context of over-all comprehensive planning, rather than treating consultation as an appendage on the Bureau's decision making processes. The letter stated:

> "My first recommendation is that representatives of the Office of Indian Education Programs and, where facilities issues are involved the School Facilities staff, meet with representatives of 1) the Education Committee of the Navajo Tribal Council, 2) the Navajo Division of Education, 3) the Navajo Area School Board Association, 4) the Agency Superintendents of Education, 5) the Association of Navajo Community Controlled School Boards, 6) the Reservation-Wide Public School Administrators' Association, and 7) my office. Representation from each of these entities should be limited in number so that no group will have a disproportionate voice in the team. These representatives will constitute a Navajo/BIA joint planning team to plan for educational development in the Navajo Nation. ...
> What I hope to accomplish by this proposal is to put in place a mechanism so that my office and the Division of Education are informed of all BIA educational plans, the Tribal government and reservation-wide organizations are involved in your long-range planning for the Navajo schools, and individual schools are involved in any plan which involves their operation. I hope that your office will cooperate with these recommendations."

No formal response was ever received to the letter from Mr. Smith or the BIA. However, BIA representatives such as Mr. Smith, Ken Ross, Director of the Office of Indian Education Programs and, most recently, Nancy Garrett, Deputy Director of the Office of Indian Education Programs have come to the Navajo Nation and addressed the Navajo Tribal Council, giving assurances that the BIA and the Navajo Tribe would work together in dealing with the needs of Navajo education. Ms. Garrett, in particular assured the Council in November of 1984 that the Navajo Tribe and the Bureau of Indian Affairs would give "joint consideration" to "adjustments" of the BIA school system .

III. Application to Current Proposals to Close or Consolidate Schools or Dormitories

It is in light of the Federal and Tribal laws and policies referred to above that the current proposals to consolidate or close schools and dormitories in the BIA system in the Navajo Nation should be considered.. It is clear that in terms of the timetable of decision-making, the nature and extent of Tribal and community involvement, and the degree of attention to the social and economic impact of the proposed changes, these laws and policies are being largely ignored. The Deputy Director of the Office of Indian Education Programs has indicated that a final decision will be reached on the consolidation of Toyei and Greasewood boarding schools momentarily. The decision is set to be implemented for the coming academic year. In the meantime, the principal of Toyei boarding school has been prohibited by the Agency Education Superintendent from recruiting students for the coming year. A decision to turn the Pinon boarding school into a dormitory for Pinon public school is all but finalized. It appears that the decision preceded the public hearing at Pinon in which the community expressed its concerns about the proposed change. Again, plans are apparently being made to close out the academic program as of the end of this academic year. The dormitory at Snowflake is apparently slated for closure at the end of this academic year.

These decisions are being made rapidly and apparently unilaterally by the Office of Indian Education Programs. There has been no discussion of options for the facilities, no coordinated consultation with the Tribe, the school boards or the communities. No evaluation has been made of the social or economic impact of the proposed changes, nor any proposals put forth to mitigate that impact. It is not at all clear that the academic impact of the changes has been looked at with any thoroughness. It is even questionable that the facilities to which students will be directed are adequate to receive them. No plan has been put forward to maximize the use of the facilities scheduled for closure for any other educational, economic, governmental or community purpose. No plan has been put forward for the utilization of the equipment, materials and supplies currently in the questioned facilities.

In the case of the Toyei-Greasewood proposed consolidation, the Toyei facilities is newer and more sound than the facility at Greasewood. The Greasewood facilitys do not yet meet applicable health and safety codes, as required by P.L. 95-561, §1135(a) or 25 CFR §32.4(s)(2). The Facilities Improvement and Repair project which is supposed to bring the facilities up to code has not yet commenced and can probably not be completed by the commencement of the next academic year. The public school at Pinon does not have the capacity to provide academic facilities to the proposed influx of students from Pinon boarding school. While some representations have been made that there will be federal money for new construction at Pinon, it has not been identified or allocated at this time. The federal budget does not indicate where such funds could be found. In any case, such construction could not be completed by the next academic year. Students will have to be removed from the permanent facility in which they now are being educated and housed in temporary classroom structures. In the case of the Snowflake dormitory, it is not clear that any comparison has been made between the academic program available to students in Snowflake, and the program available in the schools to which they will be directed next year.

No consideration has been given to the effect of the newly imposed school attendance boundaries on the school at Toyei. Toyei has a large attendance area. The impact of this area will not be felt until next year. It may not be felt at all if the BIA continues to forbid the school to recruit students from its attendance area. No information has been provided on the effect of the closure of Toyei on existing attendance boundaries. The Toyei School Board has requested to be allowed to recruit students for the coming year. If sufficient students can be recruited, the school should continue to operate. If not, the board has requested time until the end of this fiscal year and assistance from the BIA to identify and propose alternative use for the facilities. There are great needs in the area around Toyei for educational and economic developement programs. Fort Defiance Agency has no BIA high school. Toyei could be developed into a high school. There is a need for a vocational/technical high school, for a post-secondary vocational institute, for a facility housing alternative educational programs. Any one or combination of these programs could be housed at Toyei. The area needs economic development centers. Toyei could provide facilities for business and light industrial development.

Similar analysis needs to be applied to the facilities at Pinon and Snowflake. The Snowflake Dormitory is located in the town of Snowflake. Even if it is closed as a dormitory, provision could be made to utilize the land and facilities for economic enterprise activities of the Navajo Tribe (a similar use could be made of the dormitory facilities at Magdalena). Similar concerns should be addressed in regard to any proposed closure or consolidation.

The point is that the process of hasty, unilateral decision-making which is currently taking place is not sound either educationally or economically. It is contrary to the clear meaning and intent of federal law. It violates fundamental laws and policies of the Navajo Nation. It is also totally unnecessary. The Navajo Tribe has expressed its total willingness to work with the BIA in planning the future development of the BIA education system. This includes a willingness to make "adjustments" in the system, consolidating and closing programs that cannot be justified in their current form, adding and expanding where needs are not being met by the existing components of the system. The Joint Planning Team, called for in Chairman Zah's letter of August, 1983, has been appointed by the Education Committee of the Navajo Tribal Council. What is needed is for the BIA, particularly the Office of Indian Education Programs, to come forward and agree to join in the process of joint planning and mutual effort which the Navajo Nation is proposing. This is nothing more than the minimum required by Congress in the Indian education laws enacted in the past decade.

The Navajo Nation is willing, even eager to work with the BIA in modernizing, improving and steamlining the BIA education system. However, the Navajo Nation cannot accept a process which denies to it and to the communities affected any meaningful role in the process. The Navajo Nation must defend its sovereignty and its standing as a government, dealing with the United States on a government to government basis. It must exercise its responsiblity toward the Navajo people by defending the right of local Navajo communities and school boards to participation in making the decisions which affect them. What is involved is not a refusal to accept change, but a refusal to be dictated to regarding what changes will take place and how they will occur. There is no reason to procede with hastily planned, disruptive program terminations when the opportunity exists for a more reasoned, comprehensive process of program development.

In the past year, changes have been brought aboot in the BIA education system with the support of local communities, often initiated by local communities or school boards. For example, the boarding schools and Tohatchi and Chuska have consolidated, at the intiative of the local boards. The consolidated school is located at the Chuska campus, where a major renovation and addition to the facility has been made. The Tohatchi campus has been turned over to A School for Me, a special school for handicapped younsters. This consolidation has resulted not only in a better facility and program for the consolidated schools, but a major improvement in facilities for the special school as well. This consolidation was initiated at the community level and accomplished without dislocation or waste.

The Kaibeto School Board is negotiating with the Page Unified School Board (an Arizona public school district) to enter into a cooperative agreement for provision of education and dormitory facilities to the children of the area. These efforts have been endorsed by the District One Council, representing the Chapters at Red Lake, Coppermine, Lechee and Kaibeto.

A consolidated facility is being constructed for the communities at Jones Ranch and Chichiltah. Again, the matter has been subject to extensive community discussion and evaluation. Sufficient time has been taken to resolve problems before the consolidation occurs.

These examples illustrate that the Navajo Nation and the local Navajo communities are willing to accept and even initiate changes in their schools and educational programs. They welcome positive innovation. The Navajo Nation has a responsibility, however, to its people, to its children to assure that these changes are well thought out, educationally, socially and economically and that they are arrived at through a process of shared consideration in which the Federal government, the Tribal government and the local community all play a significant role.

Prepared by: Navajo Division of Education
Mary Helen Creamer, Executive Director
P.O. Drawer N
Window Rock, Navajo Nation
(Arizona) 86515
(602) 871-4941, x 1430 - 1432

APR 0[illegible] 1985

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Indian Education
BCCO #1477

MAR 29 1985

Honorable Eldon Rudd
House of Representatives
Washington, D.C. 20515

Dear Mr. Rudd:

Thank you for your March 12, 1985 letter to Mr. John Fritz, Deputy Assistant Secretary, Bureau of Indian Affairs, on behalf of Mr. George Brown, Director of the Toyei School Board, expressing concern over the BIA proposal to consolidate the Toyei and Greasewood Boarding Schools.

The Bureau has not made a final decision to consolidate the Toyei School with the Greasewood Boarding School. We are currently reviewing the effects the consolidation would have on the students, community, and tribe. The Fort Defiance Agency began its consultation efforts in August, 1983, and since that time has met on numerous occasions with the school board and tribe. In addition, the Navajo Education Department has been advised of the proposed consolidation and has submitted to the Bureau a utilization plan for the Toyei facilities if the consolidation were to take place.

We are aware of the Toyei School Board's opposition to the consolidation proposal. It should be noted that the Bureau decided to review this option only after a fifteen year decline in enrollment at Toyei. At the present time, the Toyei School's enrollment is 169: the school facility is designed for 1,100 students.

The Bureau is in the process of reviewing the effects the consolidation would have on the Toyei students. I want to assure you that the Bureau will seriously consider the educational options available to the Toyei students. In the meantime, we will continue our consultation efforts and will review all the issues which are raised by the tribe and community.

We will keep you informed as to the disposition of this matter. Thank you for your letter.

Sincerely,

Dr Kenneth [illegible] Ross

Acting Director, Office of
Indian Education Programs

WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN, NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

Attachment B

26 March 1985

Acknowledged
3-28-85
al

John W. Fritz
Deputy Assistant Secretary
Department of Indian Affairs-Operations
U.S. Department of Interior
18th and C Street, N.W.
Washington, D.C. 20245

SUBJECT: Need for Meeting on Proposed School Closures in Navajo Nation

Dear Mr. Fritz:

I am writing to acquaint you with some of the concerns being felt in the Navajo Nation regarding proposed consolidation of educational programs and school facilities within the BIA education system on the Navajo Nation. I am particularly concerned with the proposed consolidation of the Toyei and Greasewood boarding schools, the closure of the dormitory at Snowflake and the closing of the academic portion of Pinon Boarding School because a decision on these three proposals appears imminent. In recent phone calls, Ms. Garrett, Assistant Director of the Office of Indian Education Programs, informed the Executive Director of the Navajo Division of Education that a decision on these three proposals will be made in the next couple of weeks. This statement appears confirmed by a memorandum from Charles Johnson, Agency Education Superintendent for Fort Defiance Agency to the principal of the Toyei Boarding School prohibiting the recruitment of students for the coming year and stating that a decision on the future of the school will be made within the Bureau in the next two weeks.

Based upon my review of documents regarding these proposed changes, conversations with the Navajo Division of Education, and information from the Toyei community, I fear that these decisions are being made prematurely, with inadequate planning for the consequences to the communities affected and with insufficient involvement from the Navajo Nation. In the case of the schools in Pinon, for example, it does not appear that the public school has the current capacity to serve the students who would be transferred into the facility. It is for this reason that I would ask you to defer a decision on these proposed program reductions until you have an opportunity to meet with representatives of the Navajo Nation and agree upon some mutually acceptable procedures for making these decisions.

I do want to assure you that the Education Committee of the Navajo Tribal Council does not endorse any policy of automatic opposition to proposed school consolidations and closures. We realize that the BIA education system, must change to reflect existing realities, available funds, and educational priorities. Both expansion and consolidation of programs will undoubtedly be advisable from time to time to meet the developing needs of the system. However, the Education Committee is concerned that the process by which these decisions are made be orderly and involve consideration of the educational, economic and social consequences of the changes proposed for the system. We are also concerned that the Navajo Tribe and the communities affected participate in making decisions which will affect them so deeply.

Education Committee of the Navajo Tribal Council

David J. Tsosie, Chairman
Zee Sam, Vice Chairman

Thomas Atcitty
James T. Nakai

Richard K. Begay
Frank Bradley

As I am certain you have been informed, Navajo Tribal Law calls for a process of consultation with both the central tribal government and the local affected communities before a proposed closure or consolidation can have the endorsement or acquiescence of the Navajo Tribe. I am enclosing for your information the recently adopted Navajo education policy on school facilities and operations as well as the recently amended Tribal statute on consultation regarding education programs and institutions. In these statutes, which have received BIA approval, the Navajo Nation makes a clear and unmistakable statement about its needs and expectations in regard to proposed changes in education programs. This process of involving the tribal government and local community is important because of the impact that decisions such as those being proposed can have on a local community.

In 1981, the then Director of the Office of Indian Education Programs recognized that decisions about school closures and consolidations would have a major impact on the economy and community life of the Navajo Nation. The Director, pointed out, in a report analysing a Navajo Area School Survey that the boarding schools on the Navajo reservation were intended by the Bureau to become community centers for the Navajo people. They were intended to acculturate the Navajo people to community life. In other words, they were intended to create the very economic and social dependencies which have in fact grown up around the schools. The local boarding school (or day school) is often the major employer in the area. The economic impact of one of these facilities on a rural Navajo community is considerable. A small surrounding economy grows up around such facilities as well. In addition, the school becomes an area of social focus for the community. School board membership becomes an honored position. Community pride is often focused at the presence of the school. All this is as was intented by the planners who developed the boarding school system for the Navajo Nation.

The elimination of one of these schools. without careful planning to fill the gap in the economy and social life of the community can have devastating consequences. Inadequate planning for the students affected can create confusions and uncertainties that only fuel the drop-out problem which exists in the Navajo Nation. This is not to say that consolidations are always bad, or that they cannot be accomplished in a way which mitigates harm to the community, and even produces benefit for the community. But the process must be undertaken based upon comprehensive plans for the educational needs of the area and based upon economic and social impact analyses and plans that offer communities some alternative to the school as a focal point for the community's economy and vitality.

The Education Committee believes that such a process of education planning can and must be undertaken in regard to the closures and consolidations most immediately under consideration and in regard to the general process of planning for the evolution of the Bureau's education system. Yet such a process need not be cumbersome. In August of 1983, Chairman Peterson Zah and Vice-Chairman Begay directed a letter to Ken Smith recommending the commencement of a joint planning process between the Navajo Nation and the Bureau of Indian Affairs in regards to changes and growth of the Bureau's school system. While there has never been a formal response to this letter, Bureau officials such as Ken

Smith, Ken Ross and Nancy Garrett who have appeared before the Navajo Tribal Council have always assured the Council of the Bureau's willingness to work with the Navajo Tribe in addressing the Bureau education system's needs. Given the urgency of the present situation and the continuing need for comprehensive educational planning, the Education Committee has taken steps to establish the Navajo Nation's education Joint Planning Team, and to invite your Bureau to join with the Navajo Nation in working together to make decision for this system.

The participants on the Joint Planning Team appointed by the Committee include myself, David J. Tsosie, Chairman of the Education Committee of the Navajo Tribal Council; Mary Helen Creamer, Executive Director of the Navajo Division of Education; Raymond Morgan, Chairman of the Navajo Area School Board Association; Benjamin Barney, Director, Association of Navajo Community Controlled School Boards; Patrick Graham, Director, Reservation-Wide Public School Association; a representative of the Chairman of the Navajo Tribal Council and a representative of the BIA agency education superintendents. In addition, adjunct members of the joint planning team will be appointed from the agency school boards, local school districts affected, the Division of Economic Development, the Division of Community Development and the Division of Child Development when deliberations of the Team involve areas of particular importance or familiarity to those entities.

We believe that a planning process utilizing this team and representatives of the Bureau, the Office of Indian Education Programs, and where appropriate, representatives of the Facilities Improvement and Repair program can come to educationally and economically sound decisions for the Bureau's education system within the Navajo Nation. I hope that you will lend your support to this effort.

In the meantime, we are concerned that decisions not be made in a precipitous manner in regard to the proposed closure of Snowflake and consolidation of Toyei and Greasewood and closure of the academic program at Pinon Boarding School. The Navajo Tribe is working to evaluate the proposals in terms of all the community needs and to assist the communities in understanding their current situation and proposing workable alternatives. We believe this process will result in some workable and advantageous options for these programs. The Toyei community, in particular, is gearing up to do some serious planning and determination of options for the Toyei facility and for their educational and economic needs. We are concerned that a precipitous closure of the Toyei facility could stymie this process and produce unnecessary educational and economic dislocation in the Toyei community. I enclose for your information a resolution and position paper adopted by the Toyei school board.

With the full support of the Education Committee, the Director of the Navajo Division of Education has written to Ms. Nancy Garrett requesting her to defer a final recommendation on these proposals until the analysis of educational and economic impact and the development of program and facility options can be completed. I enclosed a copy of that letter for your information. I would urge you to support Mrs. Creamer's request and see that no final decision is made on these facilities until this process has had some time to work. I would also ask you to accede to Mrs. Creamer's request that Charles Johnson's letter prohibiting the Toyei school from recruiting students be rescinded.

Then the Education Committee invites you to meet with the Committee and with other representatives of the Navajo Nation, particularly the Joint Planning Team to establish ground rules for addressing the future need of the Bureau education system, including the needs for expansions and consolidations. We realize that hard decisions have to be made about this system. By this letter we hope to convince you that the Education Committee of the Navajo Tribal Council is ready to participate in making these hard decisions. What we are seeking is an opportunity to do the job in an adequate and professional fashion.

We look forward to your response at the earliest opportunity.

Sincerely,

David J. Tsosie

David J. Tsosie, Chairman
Education Committee of the
Navajo Tribal Council

xc: Peterson Zah
Alice Luna
Claudeen Bates Arthur
Mary Helen Creamer
Nancy Garrett
Ken Ross
Rep. Eldon Rudd
Sen. Dennis DeConcini
Sen. Barry Goldwater

Attachment C

Acknowledged
3-27-85

THE NAVAJO NATION
[illegible]

PETERSON ZAH
CHAIRMAN NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN NAVAJO TRIBAL COUNCIL

March 20, 1985

Nancy Garrett, Assistant Director
Office of Indian Education Programs
Bureau of Indian Affairs
United States Department of Interior
18th and C Street, N.W.
Washington, D.C. 20245

SUBJECT: Action Regarding Proposed Consolidations at Toyei/Greasewood Schools, at Snowflake/Holbrook Dormitories and in Pinon

Dear Ms. Garrett:

I am writing to express to you my concern about the current state of deliberations within your organization regarding proposed consolidations and closures of school and dormitory programs within the Navajo Nation. I am particularly concerned with the proposed consolidation of the schools at Toyei and Greasewood, the proposed closure of the Snowflake Dormitory, and the proposed change of Pinon Boarding School to the dormitory for Pinon Public School. My concern arises in particular from our recent phone conversation in which you stated that final recommendations would be made regarding these three situations within the next couple of weeks. As I will express more fully in this letter, I believe that such recommendations will be premature and will make more difficult the process of orderly and comprehensive determination of the appropriate future for these programs and facilities.

I want at the outset to clarify that the Navajo Nation is not taking an unyielding position of opposition to closures and consolidations. We realize that any living system must evolve if it is to retain its vitality. This is true of educational systems as well as any other. Orderly change is necessary if program quality is to be improved and institutions are to be fashioned to meet the current educational needs of the Navajo People. This changing system will require both growth and consolidation, expansion and contraction if it is to meet the needs of the Navajo Nation. My concern is that the process of decision-making that is occurring in regard to the three situations does not involve the kind of comprehensive planning, review of alternatives, assessment of community impact, and tribal and local participation which the Navajo Nation believes is essential.

In recent weeks, I have been meeting with members of the Toyei community and with officials within the Navajo Tribal Government and local BIA education officials to gain a more complete picture of the nature of the consolidation plans, their potential impact on the communities involved and the consideration being given to establishing workable options for the communities and facilities involved. As a result of this process, I have become increasingly convinced that a more deliberate, participatory process is needed if harm to the communities involved is to be avoided. I have found the community people with whom I have spoken realistic and flexible. They are willing to look at the problems which have brought focus on their facility. They are willing to look at alternatives for making the best utilization of the education resources and physical facilities available. What they resist is a sudden change of circumstances, occurring without adequate planning and preparation for the educational and economic impact on their community. In this I feel they are reasonable. The community of Toyei itself is looking to options and alternatives for the school and school facility as the attached resolution and position paper of the Toyei school board attests. I believe that some workable possibilities will be identified from this process. But the process requires a little more time. Community decision making is necessarily a more timeconsuming process that executive fiat. However, after many years as an educator in a community school, I have learned that decision making is more sound, reforms are more lasting when those affected are afforded a meaningful opportunity to take part in the planning process. I trust that you will allow such an opportunity in this case.

Over a year and a half ago, in August of 1983, Chairman Peterson Zah and Vice-Chairman Begay sent a letter to Ken Smith, then Assistant Secretary of Indian Affairs, calling for a joint planning process between the BIA and the Navajo Nation in regard to education. The letter has never received a formal response. In the past weeks, however, the Navajo Tribe has determined to initiate its part of this process. In doing so we have relied upon the assurances we have received from yourself, from Dr. Ross and from Ken Smith in various addresses to the Navajo Tribal Council that the Bureau of Indian Affairs, and particularly the Office of Indian Education Programs is committed to working with the Navajo People and the Navajo Tribal Government in dealing with education matters.

Those appointed to the Joint Planning Team include David J. Tsosie, Chairman of the Education Committee of the Navajo Tribal Council; Mary Helen Creamer, Executive Director of the Navajo Division of Education; Ray Morgan, Chairman of the Navajo Area School Board Association; Benjamin Barney, Director of the Association of Navajo Community Controlled School Boards; Patrick Graham, Director of the Reservation-Wide Public School Association; a representative of Chairman Peterson Zah and a representative of the BIA agency superintendents of education. Adjunct members of the joint planning team (members for particular subject areas) will include a representative of any affected agency school board, a representative of an affected school district, a representative of the Division of Economic Development, a representative of the Division of Community Development, a representative of the Division of Child Development. These adjunct members will be utilized when the work of the permanent Joint Planning Team affects an areas of expertise or jurisdiction appropriate to them. I hope and trust that your office will give its full cooperation to this Joint Planning Team and work with these educators and Navajo officials to establish a consistent, comprehensive process for addressing the changing needs of the Bureau's education system in the Navajo Nation.

I had hoped to discuss with you my concerns regarding the decision making on proposed closures and consolidations (as well as my concerns with school attendance boundaries) and to begin the process of identifying solutions and procedures acceptable to the Navajo Nation and to your office when I was in Washington earlier this month. Unfortunately, your refusal to meet with me unless I came without the staff person accompanying me, a person with particular familiarity with these areas, resulted in that opportunity being lost. The decisions which are now being made regarding BIA education within the Navajo Nation have potentially serious consequences for the welfare of many Navajo people and communities. We cannot afford to lost any other opportunities for coming to a reasonable understanding of how these decisions will be made, and what factors will be considered in making plans for the system.

Based upon the consideration I have discussed in this letter, I am requesting you to defer a final decision on the consolidation of Toyei and Greasewood boarding schools, the closure of the Snowflake dormitory and the change of Pinon Boarding School to a dormitory, until the processes I have described which are already in operation have had an opportunity to bear fruit. I would also ask you to meet with myself and those representatives deemed appropriate by the Navajo Nation to make plans and agree upon procedures for evaluating these proposals. In the meantime,I would ask you to rescind the directive recently sent to the Toyei Boarding School by Agency Education Superintendent Charles Johnson prohibiting any activities to recruit students for the coming year. This directive has caused great concern in the Toyei community and has lead community members to fear that the decision is already made and that their concerns will not be addressed.I would also ask that you defer any actions to shut down the academic program at Pinon Boarding School, particularly in light of the serious questions which exist about the ability of Pinon pubic school to serve these students in their existing facilities.

If these steps can be taken, I believe that we should be able to come to an agreement quite expeditiously on the steps that should be taken in regards to the school at Toyei, the dormitory at Snowflake and the schools at Pinon. Please let me know your response as soon as possible.

Sincerely,

Mary Helen Creamer, Executive Director
Navajo Division of Education

MHC:ic

xc: Peterson Zah
Alice Luna
Education Committee
Claudeen Bates Arthur
Rep. Eldon Rudd
Sen. Dennis DiConcini
Sen. Barry Goldwater
Ken Ross

RESOLUTION OF THE TOYEI SCHOOL BOARD

Making Certain Requests Regarding a School Enrollment Drive and the Opportunity to Develop and Propose Options for the Use of the Toyei Boarding School Facilities, and Protesting the Proposed Placement of Navajo Children in Unsafe Facilities

WHEREAS:

1. Toyei School Board is a local school board as defined by 25 CFR § 32.3 (p); and

2. Numerous Tribal and Federal statutes and regulations clearly establish the right of this school board and the Indian people it serves to be consulted in regard to any plans for the Toyei Boarding School, and to participate fully in developing such plans (see position paper incorporated herein); and

3. The Toyei School Board does not believe that the BIA has consulted in "good faith" regarding the proposal to consolidate Toyei Boarding School with the Greasewood Boarding School, since there were no other options discussed, and since many questions raised by the Board and the communities it serves have never been answered; and

4. The Greasewood Boarding School facilities are unsafe in their present condition and do not meet applicable health and safety codes as required by federal statutes and regulations, and will not meet such codes until the scheduled Facilities Improvement and Repair project is completed; and

5. The students currently enrolled at the Toyei Boarding School are housed in a safe facility in excellent condition, and should not be forced to occupy unsafe facilities elsewhere; and

6. There is strong desire within the affected communities and programs to keep the Toyei Boarding School and its facilities open so that full use can be made of them for the educational and economic development of the surrounding communities as intended by the BIA when it originally developed its plan for boarding schools (see position paper incorporated herein); and

7. There are numerous options and alternatives for the continued use of the Toyei Boarding School facilities which have never been explored and which would allow the school to remain in operation and significantly help to develop the local economy while reducing the cost to the BIA of maintaining the facilities; and

8. In view of the negative educational and economic impacts closure of the Toyei Boarding School facilities would have, and in view of the commitment of the Reagan administration to the

development of strong reservation economics, it would be inexcusable to completely close said facilities as proposed by the BIA; and

9. The Toyei School Board strongly believes that, given the opportunity and the required assistance, it can demonstrate the desire of the communities it serves to keep the Toyei Boarding School open by enrolling at least 300 or more students for the coming school year.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The attached "Position Paper of the Toyei School Board on Use of the Toyei Boarding School Facilities" is hereby incorporated into and made part of this Resolution.

2. The Toyei School Board hereby protests the proposed placement of Navajo children in the Greasewood Boarding School facilties, as those facilties are unsafe and do not meet applicable health and safety codes as required by federal statutes and regulations; and

3. The Toyei School Board hereby urgently requests that it be granted until the end of the current school year to conduct an enrollment drive utilizing the administration and staff of the Toyei Boarding School, as well as other resources; and

4. The Toyei School Board further requests that if it is successful in bringing the documented tentative enrollment of Toyei Boarding School up to 300 students by the end of the current school year, it be given an additional year to operate the school, to further increase its enrollment, and to develop and propose additional options for the use of the facilities for educational and economic development purposes; and

5. The Toyei School Board hereby declares that if it does not succeed in bringing the documented tentative enrollment of the Toyei Boarding School up to 300 students within that time, it will give its full and most serious consideration to the consolidation of the Toyei Boarding School program with the Greasewood Boarding School on the conditions that:

A. The Board is given at least until the end of the current fiscal year (September 30, 1985) to develop and propose educational and economic options for the use of the facilities and related equipment, furniture and other materials, and

B. That the Bureau of Indian Affairs give its formal commitment to assisting and supporting any reasonable proposal which might result from such efforts.

6. The Toyei School Board hereby requests the assistance of the Bureau of Indian Affairs, all appropriate Divisions, offices and officials of the Navajo Tribe, officials of the Jeddito, Steamboat and White Cone Chapters, and the Navajo Area School Board in implementing the intent of this resolution; and

7. The Toyei School Board hereby requests the full support and assistance of the United States Senators and Congressmen from the State of Arizona in its efforts to implement the intent of this Resolution.

C-E-R-T-I-F-I-C-A-T-I-O-N

I hereby certify that the foregoing Resolution was duly considered by the Toyei School Board at a duly called meeting in Toyei, Navajo Nation (Arizona), at which a quorum was present, and that same was passed by a vote of 3 in favor and 0 opposed, this 14th day of March, 1985.

George C. Brown, President
Toyei School Board

POSITION PAPER OF THE TOYEI SCHOOL BOARD ON USE OF THE TOYEI BOARDING SCHOOL FACILITIES

It is the clearly established policy of the United States Federal Government to facilitate Indian control of Indian Education (Title XI, PL 95-561, Sec. 1130) and to assure maximum Indian participation in the direction of educational services, including effective and meaningful participation in the planning, conduct and administration of those services and programs. [PL 93-638, Sec. 3.(a) and (b)] It is the right of the Navajo Tribe, the Navajo People and local Navajo school Boards to be consulted by the Bureau of Indian Affairs regarding the planning of and changes in educational policies, services and programs. [10 NTC Ch. 1, §§ 2, 107 and 121; 25 CFR § 32.4 (a) (1) and (2)]

It is the policy of the Federal Government to "ensure that Indian Tribes...fully exercise self-determination and control in planning, priority-setting, development, management,(and) operation...in all aspects of the education process", and to "ensure that each...local school board shall be authorized and empowered to function as the policy making body for the school...". [25 CFR § 32.4 (a) (3) and (4)] It is also the policy of the Federal Government to "assume an assertive role in coordinating comprehensive support for Indian...students...in education, mental and physical health, juvenile justice, job training, including apprenticeship programs and other related Federal, State and local programs and services." [25 CFR § 32.4 (k)(2)]

It is the policy of the Federal Government to promote the community school concept by encouraging year around multi-use of educational facilities, equipment and services for Tribal... and community development", and to " provide day and residential educational services as close to an Indian...student's home as possible". [25 CFR § 32.4 (o) and (p)] It is the policy of the Federal Government to "implement procedures,...(and) practices... to ensure flexibility in the exercise of local Tribal...options, and provide for input in periodic reviews,...and revisions to meet changing needs and circumstances." [25 CFR § 32.4 (q)(2)], and to "ensure that the needs of the students and Tribal...community will receive first priority in the planning...(and) operation...of Bureau schools and residential facilities, rather than other considerations...", and to "maintain all school and residential facilities to meet appropriate Tribal, State or Federal safety, health and child care standards."[25 CFR § 32.4 (s)(1) and (2)]

The Deputy Director of the BIA Office of Indian Education has indicated that a decision on the proposed consolidation of Toyei Boarding School with the Greasewood Boarding School is expected on or about March 22, 1985. In working toward that decision, the Bureau of Indian Affairs has not made a good faith effort to carry out the intent of the above-mentioned statutes and regulations. There has been no discussion of options, and no coordinated consultation between the school board, the Tribe, the communities and the Bureau. In fact, when Mrs. Mary Helen Creamer, the Executive Director of the Navajo Division of Education, and one of her staff members attempted to meet with Ms. Nancy Garrett of the BIA to discuss closures and consolidations, Ms. Garrett refused to let Mrs. Creamer bring her staff member to the meeting, so there was no meeting. This shows the way the Bureau has treated this whole matter. Given these facts, a decision on closure and consolidation would be premature at this time.

In view of the pending decision, the Ft. Defiance Agency Superintendent for Education has declared any recruitment of students for the Toyei Boarding School by the school principal and staff to be "inappropriate", thus effectively preventing them from doing one of the primary things which could demonstrate the continued need for keeping the Toyei Boarding School open.

The Greasewood Boarding School facilities do not meet health and safety codes as required by P.L.93-638, Section 1125(a) or 25 CFR § 32.4 (s)(2). The Facilties Improvement and Repair project which is supposed to bring the Greasewood facilities into compliance with the applicable codes has not even begun yet, and is not likely to be finished by this fall. At the same time, the Toyei facilities are in excellent condition and very safe. This means that if Toyei Boarding School is closed and its students are compelled to attend Greasewood Boarding School this fall, they are being placed in an unsafe situation. This is indefensible, and should not be tolerated.

The Toyei School Board feels it should be given the opportunity to recruit students for the coming year, particularly in view of the large enrollment boundary which has been assigned to it. If the boundary currently in effect was enforced for the coming school year, it would serve to increase the number of students at Toyei. The Navajo Tribe has taken the position that the current boundaries are only temporary, but we are told that there would probably be little change in what has already been developed when the Tribe proposes its own set of boundaries.

There is a strong desire within the communities of Jeddito, Steamboat and White Cone and within programs which utilize the services and facilities of the Toyei Boarding School to keep the school and the facilities open so that full use can be made of them for the educational and economic development of the surrounding communities as intended by the BIA when it originally developed its plan for boarding schools. It is a matter of record that the BIA recognized many years ago that a school like Toyei Boarding would become an economic as well as an educational center for the communities it served, and Toyei Boarding School has become just that.

There are numerous options and alternatives for the continued use of the Toyei Boarding School facilities which would allow the school to remain in operation while reducing the cost to the BIA of maintaining the facilities. These options have never been explored fully, if at all, by the Bureau of Indian Affairs in arriving at a decision on closure and consolidation of the Toyei Boarding School. Such options include, in addition to the other programs already utilizing portions of the facilities: a school for "student (teenage) parents" such as was operated very successfully by the BIA at Toyei Boarding School in the past; a Vocational-Technical High School; an Adult Education Program; an Alternative High School for certain kinds of students who have dropped out of other schools; businesses and light industries of various kinds; a G.E.D. program; a PL 93-638 contract. And these are not the only possibilities. There are many viable options which could be developed which would bring much increased educational and economic development to the surrounding communities.

If the school board, the school administration and staff and the surrounding communities cannot increase the enrollment sufficiently to justify and financially support keeping the elementary school program open, the BIA still has a responsibility to assist the communities in avoiding the severe economic consequences which result from simply closing the school down, dispersing the equipment, furniture and materials to other schools, and then virtually abandoning the facilities. Such abandonment would no doubt lead to the creation of a health and safety hazard at Toyei, since once a facility like that is closed and emptied, it is nearly impossible to get the kind of support and financing needed to reopen it for almost any purpose. This has been seen elsewhere, such as in Shiprock and Sanostee.

This should not be allowed to happen here. The Reagan administration has declared its commitment to assisting Indian Tribes to develop strong and self-sustaining economies. The Toyei Boarding School facilities are in excellent condition, and should not be simply abandoned by the BIA when they could serve as the focal point of a viable educational and economic development plan.

UNITED STATES GOVERNMENT

memorandum

DATE: 8 MAR 1985

REPLY TO ATTN OF: Superintendent for Education, Fort Defiance Agency

SUBJECT: Recruitment for Students and Other Activities

TO: Principal, Toyei Boarding School

In view of the fact that a decision, on the proposed consolidation of Toyei with Greasewood, is pending, it would not be appropriate for you or your staff to take any action toward enrollment of students for the coming School Year. If the decision is to keep Toyei open, then and only then would it be appropriate to begin enrollment for next year at Toyei. I expect a decision. from the Central Office, within the next two weeks.

You and your staff are to continue to devote full time to the education of the students you now have.

The amount of money the School Board set aside for stipends is being rapidly depleted. When the amount in your NASBA Contract is used up, there will be no other funds available since your school budget will be overspent in just maintaining services to the students. I am not in favor of taking funds from the students. Please determine the amount remaining in your NASBA Contract and notify the School Board of the amount remaining.

You and your staff have the right to continue discussing the proposed consolidation until such time as a decision is rendered. After a decision is rendered, whether it be for or against consolidation, you and your staff will be required to support the decision.

Any questions are to be directed to me.

Charles E. Johnson
Charles E. Johnson

Copy to All Employees
MARCH 8, 1985.
Principal Toyei Brdg. School

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

FEB [illegible] 1985

Testimony Given at Toyei/Greasewood Public Hearing
Toyei Boarding School Gym

Monday, January 28, 1985
9 a.m. to 5 p.m.

Good morning. My name is Charles Johnson. I am the Agency Superintendent for Education for the Fort Defiance Agency. I am the hearing officer. The purpose of this hearing is to consider the proposal made by the Bureau of Indian Affairs, Office of Indian Education Progrms to consolidate the Toyei Boarding School with the Greasewood Boarding School. My purpose is to hear any person who wishes to give testimony concerning this proposal. I cannot, at this hearing, consider any other questions. My purpose for being here is to hear your testimony and then to present it to the Office of Indian Education Programs in Washington, D.C. My purpose is not to debate the question with you. I will not debate with you. If you have strictly an informational question which you wish to ask, I will try to answer your questions but I will not debate the issue. That is not the purpose of this hearing. The purpose is for you, who have signed up, to give testimony. So far, we have 15 people signed up to present testimony. At the present time, it looks like we will be able to allow them as much time as they wish to speak. However, if it does get to the point where it looks like too much time is being taken, we may have to limit the amount of time that you have to present your testimony. To do otherwise would prevent someone else from being able to give their testimony. We will start the testimony in just a moment. We will hear testimony until approximately 12:30, at which time the school will serve lunch. We will break for one hour and testimony will resume at 1:30 p.m. and end at 5:00 p.m. It is now 11:20 a.m.

1. Lee Bitsuie, Steamboat Chapter Member. Good morning everyone who are gathered here for the purpose of expressing your concerns. However, we heard

on the radio about this hearing. We at Steamboat Chapter had asked for a public hearing during a meeting of the Steamboat Chapter. A lot of people voted for it. No doubt a lot of you know about it. We did not ask the BIA staff to hold a public hearing for us. I want you all to know about this, community leaders. Years ago, the authority for schools was given to the school boards. They were given full authority. When we got it, the 18-member Advisory Committee of the Tribal Council at Window Rock met and discussed it. At that time, this authority was also given to the Advisory Committee. So, authority was given to two different tribal organizations. I have been thinking about this today and I do not think it is right THAT BIA should be conducting a hearing. This is why I am here talking to you about it. The reason why I am saying this is because the law which was made by Washington addresses consultation. Whenever there is a proposal for discussion, the BIA will do consultation with the people. Only if consultation is not made with the people by BIA, the proposal will not be any good. After thinking about this today, I think we made a mistake. By meeting here today, we played right into the BIA's hands. Because of our meeting here today, the BIA will say that they have consulted with us, the people. This is how BIA will say that they made consultation and will report to Washington in writing. I am very concerned about this. You will say that you did meet here today. I will not hear what BIA says here, I will just go on my way and leave here. This is the BIA's public hearing, not a public hearing by the community people with community leaders sitting at the front table. Washington says that consultation has to be made. BIA will say that consultation was made, that the people were told about this closure, and for that reason, the school can be shut down. This is the reason for my opposition to this public hearing that is sponsored by the BIA. The interpretation is different from the BIA on consultation. Also it is a different meaning for the Navajo Tribe. Because of this, it is one of the tactics the BIA is playing now. They can say this is consultation. I made consultation with the public, that is why I have a reason to close the school. This is what the BIA will say. Think about this. See how it will be. It would be better if we leave here and have a public hearing at the chapter. This way, if we stay here, we are just going along with the BIA. We are just going along with this man sitting here. They, BIA, monitor the schools and just lead them around. The school board have the authority to make proposals. We heard on the radio, that BIA will have a public hearing. I do not believe this is right. I will leave here but it is up to you. I don't know about you. If you want to stay, you can. Right now, all you are doing is letting BIA have their way, they are consulting with you. That is why they are here. Whatever you say, whether you ask to keep the school open or not, the decision will be to close it. The public hearing is just another step toward closing the school. He is telling you that the public hearing is for discussion of the school closure. That is why he is sitting here. You should recognize this. How would it be if our community people were sitting at the front table? Then it would be our proposal. I wanted to tell you about this and wish you would think about this. Thank you.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Fort Defiance Agency
P. O. Box 110
Fort Defiance, Arizona 86504-0110

IN REPLY REFER TO:
Office of Indian
Education Programs

NOV 27 1984

DEC [illegible] 1984

Mary Helen Creamer, Director
Navajo Division of Education
The Navajo Tribe
P. O. Box 308
Window Rock, Arizona 86515-0308

Dear Mrs. Creamer:

The Fort Defiance Agency Education Office wishes to inform you that consultation is beginning with the school boards of Toyei Boarding School and Greasewood Boarding School on the consolidation of those two schools. The target date for accomplishment is the commencement of the 1985-86 School Year.

Further, a meeting is set with Snowflake Dormitory School Board to consult with them on the closure of the Dormitory at the end of the School Year.

Your office will be kept aware of our progress. Please feel free to call on me at any time.

Sincerely yours,

Ernest E. Ingraham

Ernest E. Ingraham
Assistant Superintendent for
Education

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

RECEIVED
NOV 26 1984
FT. DEFIANCE AGENCY
OIEP

NOV 19 1984

Memorandum

To: Agency Superintendent for Education, Fort Defiance

From: Acting Director, Office of Indian Education Programs

Subject: School Adjustments

As a follow up to my presentation to the Navajo Tribal Council on November 14, you should begin (or continue) the formal consultation process on the (1) consolidation of Toyei with Greasewood (2) (2) closure of the Snowflake Dormitory, both of which should be accomplished by the commencement of the 85-86 school year. I suggest that you immediately write to the Director, Navajo Division of Education advising her of your intent to begin consultation. My advice is that you carefully document every telephone conversation, attempted but unreturned telephone calls, meetings, and discussions on these school adjustments. Please keep me informed and send me copies of any correspondence. I expect to return to Navajo sometime after the first of the year.

Nancy C. Garrett
Nancy C. Garrett

cc: Dennis Fox

CN-62-84

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Opposing Any Closure of Any BIA Educational Facilities Without Consultation and Joint Planning With the Navajo Tribe and With the Affected Local Communities, School Boards and Navajo People and Directing the Navajo Tribal Government to Take Appropriate Action in Support of this Resolution

WHEREAS:

1. The Navajo Tribe in the Navajo Tribal Code, in the Navajo Education Policies, and in the official statements of the Chairman of the Navajo Tribal Council has prescribed full consultation and joint planning involving the Navajo Tribal Government and affected school boards, communities and individuals before the expansion, closure or consolidation of any education program or facility; 10 NTC §2; 10 NTC §121; and

2. The Navajo Tribe rightfully relies upon the Treaty of 1868 and the mandates of federal laws, which prescribe federal responsibility for the education of the Navajo people and prescribe an active, participatory role for tribal governments and for Indian communities and people in formulating plans for Indian education, including plans for facilities utilization, school closures and other education concerns; and

3. Despite the mandates of the treaty and federal laws, and in contravention of the government-to-government relationship between the Navajo Tribe and the Government of the United States, the Bureau of Indian Affairs has closed the Sanostee Boarding School without meaningful consultation or cooperative planning with the local school board, local community or the Navajo Tribal Government regarding the state of the facilities, options for continued operation, or alternatives for the children involved; and

4. Similarly, changes are projected for the Snowflake Dormitory which have also been proposed in contravention of the government-to-government relationship and without appropriate consultative processes; and

5. There is a genuine danger of additional closures or changes in program of educational facilities serving the Navajo Nation, which could impair the quality of education available for Navajo students; and

6. Inadequate maintenance of educational facilities by the Bureau of Indian Affairs may result in additional facilities closures at the expense of the Navajo people and in disregard of the responsibility of the Bureau for adequately maintaining its facilities; and

7. The Navajo Tribe has a national interest in maintaining government-to-government dealings with the federal government in regard to all Navajo educational facilities and programs built, operated or maintained with federal funds, and in assuring that no reduction in educational services occurs in regard to these facilities or programs.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council reaffirms its right to rely upon the Treaty of 1868 and federal laws regarding Indian education to require of the Government of the United States appropriate provisions for the education of Navajo students developed and operated in cooperation and consultation with the Navajo Tribal government, local school boards, local communities and the Navajo people.

2. The Navajo Tribal Council reaffirms its commitment to joint planning with federal, state, local and private education providers in arriving at decisions regarding educational programs and educational facilities.

3. The Council directs the Chairman of the Navajo Tribal Council, the Attorney General of the Navajo Nation, the Executive Director of the Navajo Division of Education, and the Education Committee of the Navajo Tribal Council to make appropriate plans and take appropriate actions in support and defense of the rights of the Navajo Nation to partnership with the Bureau of Indian Affairs in planning for educational programs and for educational facilities utilization, including where these interests are significantly affected, litigation in support of the rights and interests of the Navajo Nation.

4. The Navajo Tribal Council further requests that the BIA facilities at Shiprock, New Mexico be renovated before the facilities are transferred to the Navajo Tribe for the Navajo Community College Shiprock Branch.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 67 in favor and 0 opposed, this 14th day of November, 1984.

Peter Zah

Chairman
Navajo Tribal Council

§ 119. Substance and Alcohol Abuse

Navajo Tribal law prohibits the possession or consumption of drugs and alcoholic beverages on the Reservation. 17 NTC §§ 390-395, §§ 410-412. All local schools shall discourage the utilization and consumption of drugs and alcoholic beverages through relevant academic or preventive guidance programs for all Navajo youth. Schools along with other community resources shall encourage positive self-concept, provide factual information and encourage personal responsibility. Schools shall work with other community service providers to seek and develop programs and resources to assist students addicted to the use of alcohol and other mind-altering substances so that they may fully participate in the school program.

§ 120. Bus Routes and Transportation

Adequate bus transportation is of vital importance to the Navajo Nation to improve school attendance and increase the day attendance opportunities for Navajo students. Adequate bus transportation systems for students shall be established to ensure safe transport of Navajo students to and from school. Local school board policy governing the transportation of pupils shall meet or exceed all applicable state and federal safety regulations. The Navajo Tribe, through the Education Committee and the Tribal Roads and Transportation Committee, shall work in a joint and cooperative effort with the states in which the Navajo Nation is located and the Bureau of Indian Affairs to adopt adequate school bus routes, to avoid excessively long bus travel and to develop a comprehensive school transportation plan. The Tribal government may enter into agreements with the federal government, states, counties, local schools and school districts within and bordering the reservation to implement school transportation plans. In apportioning funds for road construction and maintenance, the tribal, federal, state and local (county) government shall consider school transportation needs for day attendance as a priority consideration. This section shall not justify the closure of any school nor the denial of day attendance opportunities to students within a school's day attendance area.

§ 121. School Facilities and Operations

1. All educational programs located within the Navajo Nation or serving significant numbers of Navajo

students shall be housed in facilities that are accessible, appropriate to the purposes for which they are used, and maintained in good repair. The Bureau of Indian Affairs is responsible either directly or through contract to maintain in good repair all educational facilities owned or operated by the Bureau or operated with funding from the Bureau. This subsection shall not be interpreted to justify the closure of any school facility in a manner contrary to the provisions of subsection "2" of this policy or in violation of any tribal, state or federal law regarding school closures.

2. The Navajo Division of Education shall establish joint planning efforts with schools and school systems in the Navajo Nation and with those educational institutions receiving federal funding to educate Navajo students to accomplish the following provisions:

A. When planning construction, expansion, consolidation, or closure of any school or school residential unit serving the Navajo Nation, the decision-making entity shall, from the initial stages, consult with the affected school boards and school board organizations, the Education Committee of the Navajo Tribal Council, the Navajo Division of Education, affected chapters and local communities and with those students, parents, and staff who use the facility; and shall incorporate the desires of these parties into their plans to the greatest extent feasible.

B. The construction, expansion, and renovation of any school facility shall conform to all applicable state and federal health and safety regulations, to established safety and building codes and to laws regarding environmental assessments and environmental impact.

C. In planning for the construction of any new educational facility, consideration shall be given to the development of an appropriate physical environment including but not limited to considerations of location, size, alternate use, and the extent to which the proposed facility will benefit unserved and inappropriately served populations, including students required to travel daily on the bus for an excessive amount of time.

§ 122. Vocational Education and Career Education

1. The Navajo people have a right to education in basic, technical, employability, managerial, and entrepreneurial skills. The Navajo Tribe shall advocate with federal, state and private sources for adequate funding of vocational and career education programs. The Navajo Tribe shall integrate educational planning with economic planning

Section 1.

Tribal resolution CAU-43-61 is hereby repealed and superceded by the Navajo Education Policies, 10 NTC §§ 101 - 127. 10 NTC § 1 - 5 are hereby designated as Title 10, Chapter 1, Subchapter 1 -- Miscellaneous Provisions.

Section 2. 10 NTC §1 is amended and reads as follows:

§ 1. Compliance with requirements of ~~accredited systems~~ Navajo Tribal law

~~An~~ ALL educational ~~system~~ programs ~~shall be put into~~ in operation on the Navajo reservation ~~that~~ will meet the requirements of ~~the accredited systems of the States of the Union~~ the education laws of the Navajo Nation.

Section 3. 10 NTC §2 is amended and reads as follows:

§ 2. Changes in educational program or operation; discussion; Approval

(a) (1) It shall be the policy of the Navajo Tribe that any agency, organization, or group proposing and planning a new school facility, expansion or change-over of an existing facility, a change in school site, a transfer from Bureau to public school operation, a change from boarding school to day school operation, establishment or changes of bus routes, or any other change in educational policy or operation, which may affect the lives of local citizens, shall ~~be requested and urged to~~ consult with the Navajo Tribe for full discussion of such proposed changes.

(2) Further, any agency, organization, or group proposing such changes shall ~~be advised to~~ consult and discuss such plans with appropriate Bureau of Indian Affairs' staff ~~in the Agency or sub agency level~~, with the Education Committee of the Tribal Council, with local Chapter officers, ~~and~~ with the people of the communities to be affected, either directly or indirectly, with local school boards and with the Navajo Division of Education.

(b) It shall also be the policy of the Navajo Tribe that official endorsement of such changes or proposals by the Navajo Tribe shall be withheld until every effort has been made by the responsible agency, organization, or group to obtain the approval and endorsement of the Navajo people affected, and tribal laws regarding the planning and undertaking of such change or proposal have been complied with. ~~that~~ Such endorsement of proposed plans or changes shall be obtained prior to the implementation of such educational programs.

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN, NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

August 17, 1983

Mr. Ken Smith
Assistant Secretary - Indian Affairs
U.S. Department of Interior
Office of the Secretary
Washington, D.C. 20240

SUBJECT: Consultation with Navajo Tribe Regarding BIA School Changes

Dear Mr. Smith:

I am writing in response to your letter of June 3, 1983, requesting me to identify "those tribal entities which need to be involved" in consultation with the Bureau of Indian Affairs and BIA School Facilities in regard to changes in BIA school operations, including school consolidations and closures. I have consulted with the Navajo Division of Education and with the Education Committee of the Navajo Tribal Council in framing a response to your question.

In the first place, I applaud your assurance that the Bureau will meet its commitment to several of our Navajo communities to undertake and complete expansions of their local BIA Schools, as detailed in your letter.

Next, I would like to convey to you my ideas about an appropriate process of consultation in regard to major BIA decisions regarding schools serving Navajo students, including plans for expansions, closures and consolidations. I believe that the consultation process should be an ongoing process. It should begin in the developmental stage of BIA school planning. I envision it as a kind of co-planning in which the BIA, the Navajo Tribe and appropriate local communities and educational organizations work together to arrive at common plans for expanding, consolidating and closing schools. In only this way can the BIA hope to arrive at a comprehensive plan which is acceptable to the Navajo people. If consultation is piecemeal or commenced after important decisions are made it will not result in a comprehensive plan which reflects the needs and desires of the Navajo people. A comprehensive planning effort such as I envision is already underway in regard to school boundaries as the attached memorandum describes.

A comprehensive process of consultation with the Navajo Tribe must be undertaken at several levels in order to include the organizations and governmental entities which are involved in the process. These organizations would include the Navajo Division of Education, the Education Committee of the Navajo Tribal Council, the Navajo Area School Board Association, the Association of Navajo Community Controlled School Boards, the Agency School Boards, affected local school boards and representatives of affected public school districts. Involvement of these diverse groups is called for by the applicable provisions of the Navajo Tribal Code. I will describe those code provisions for you below and then propose a method of initiating consultation on BIA plans for educational changes.

Title 10, Section 2 of the Navajo Tribal Code provides that any new school faciltity, planned expansion, change in status of an educational facility, change from boarding to day operation, establishment of change of bus route, or other change in educational policy or operation should be accomplished after consultation with the Navajo Tribe. The Code provision also requires more specifically that such plans for educational changes should be implemented only after discussion and consultation with the appropriate BIA Agency staff, the Education Committee of the Navajo Tribal Council, local chapter officers and the people of the communities directly or indirectly affected. Failure to undertake such consultation and to seek joint agreement with the parties affected is grounds for the Navajo Tribe to with hold its approval from the proposal.

The Plan of Operation of the Education Committee of the Navajo Tribal Council provides among the enumerated powers of the Education Committee the power:

> "To represent the Navajo Nation on matters involving the size and location of all education facilities... ." (Part IV.B.2)

and the purpose:

> "To coordinate plans and projects with other educational agencies." (Part II.E)

The Navajo Tribal Code further provides that the Director of the Navajo Division of Education is responsible for representing the Tribal government in education-related areas before all persons and organizations outside the Navajo Tribal Government. Navajo Tribal Code, Title 2, §1803(6).

Finally, the Code provides specifically for a role for the Navajo Area School Board Association to consider educational problems and programs of reservation-wide significance, Navajo Tribal Code, Title 10, §302(1), and for Agency School Boards to consider educational programs and activities within each agency, Navajo Tribal Code, Title 10, §253(c). Together these provisions of Navajo Tribal law provide the framework within which the process of consultation must take place. I realize, however, that you are seeking a methodology for meeting these requirements in a time-effective way. Therefore, I will propose to you a process for initiating consultation which should allow the BIA and the Navajo Tribe to work together in the planning of educational changes affecting Navajo children and BIA schools.

1. JOINT PLANNING TEAM

My first recommendation is that representatives of the Office of Indian Education Programs and, where facilities issues are involved the School Facilities staff, meet with representatives of 1) The Education Committee of the Navajo Tribal Council, 2) the Navajo Division of Education, 3) the Navajo Area School Board Association, 4) the Agency Superintendents of Education, 5) the Association of Navajo Community Controlled School Boards, 6) the Reservation-Wide Public School Administrator's Association, and 7) my office. Representation from each of these entities should be limited in numbers so that no group will have a disproportionate voice in the team. These representatives will constitute a Navajo/BIA joint planning team to plan for educational development in the Navajo Nation. While this proposal goes somewhat beyond the kind of consultation you seek to initiate in your letter, I believe it represents a process which is essential to Navajo educational development. We must become partners in planning for our Navajo children.

2. CONSULTATION COMMUNICATIONS.

My second recommendation regards consultation on implementation of existing plans and case-by-case development of specific plans. The recommendations contained in this section may be superceded if a Joint Planning Team is established and begins functioning as the planning entity for Navajo education. For the present, however, I would request that in every case where your office is considering undertaking a change in, addition to or consolidation of an educational program, you communicate that possibility to my office and also directly to the Navajo Division of Education through the Division Director at the earliest stage of planning. The Division director will see that the information is passed along to the Education Committee. In addition, where the plan affects a school belonging to the Navajo Area School Board Association on issue affecting the entire BIA school system on reservation, NASBA should be directly communicated with. Similarly, the Association of Navajo Community Controlled School Boards should be directly communicated with by your office in regard to any matter affecting a contract school.

In many cases, consultation will involve broad issues and not be focussed on any school or agency. In these cases, I believe initial contact with the above-described entities should be sufficient to initiate the consultation process. Where, however, a proposal affecting a particular school is being considered, the school board of that school should be directly communicated with from the start as well. Likewise, plans involving any or all of the schools within a particular agency should be communicated directly to the Agency School Board.

Once your office has made its initial contacts with the Navajo Tribe and the appropriate association and/or school board(s), Navajo Division of Education will transmit the information to the Education Committee and will notify any other entities or organizations it believes are affected by the proposal. In addition, if you feel that there is some additional entity or organization which has a serious stake in the proposal, you should make direct contact.

This initial communication will begin the consultation process. In the course of consultation, it may become apparent that other groups and entities should be involved. In that case, it is expected that these groups will be informed of and involved in the process.

What I hope to accomplish by this proposal is to put in place mechanisms so that my office and the Division of Education are informed of all BIA educational plans, the Tribal government and reservation-wide organizations are involved in your long-range planning for the Navajo schools, and individual schools are involved in any plan which involves their operation. I hope that your office will cooperate with these recommendations.

I am attaching for you information the addresses of the key entities and organizations mentioned in this letter so that you may assure that your communications are addressed to the appropriate individual and place. Please let me know what your response is to the proposals contained here. I would like to see joint planning for education between the BIA and the Navajo Tribe become a reality in the very near future.

Sincerely,

Edward T. Begay
for
Peterson Zah, Chairman
Navajo Tribal Council

ATTACHMENT

XC: Mary Helen Creamer, Executive Director
Navajo Division of Education

Verner Duus, Executive Director
Navajo Area School Board Association
P.O. Box 578
Window Rock, Arizona 86515

Benjamin Barney, Contact Person
Association of Navajo Community Controlled
 School Boards
Rock Point Community School
(via) Chinle, Arizona 86503

Patrick Graham, Chairman
Reservation-wide Public School Administrator's Association
c/o Window Rock Public School District
P.O. Box 559
Fort Defiance, Arizona 86504

Agnecy School Boards
c/o Agency Superintendent for Education

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Carl Levi

RECEIVED
JUN 23 1983
Navajo Div. of Educ.
Exec. Director's Office

RECEIVED
JUN 06 1983
Office of the Chairman
The Navajo Tribe
Window Rock, Arizona
86515

Education

JUN 3 1983

Peterson Zah, Chairman
Navajo Tribal Council
P.O. Box 709
Window Rock, Arizona 86515

Dear Chairman Zah:

The Bureau's desire to upgrade the school facilities on the Navajo Reservation has steadily increased over the past few years. As you are aware, our current efforts are directed toward providing increased day school opportunities for Navajo students on the Navajo Reservation through facility improvements, expansions and renovations. In consideration of your new administration, we would like to take this opportunity to formally apprise you and your new council of our recommendations and actions to date, concerning Navajo school facilities and request your assistance in providing increased day school opportunities for Navajo students.

A total of fourteen schools have been scheduled for expansion to enlarge the day student population during this first phase. This includes six boarding schools which will continue to serve students requiring a residential program as well as increasing their day student capacity.

Meetings were held with each local school board of the fourteen schools currently being expanded by the Office of Indian Education Programs and the School Facilities Staff. One result of these sessions, aside from sharing information and concerns, was the revision of some plans to further accommodate local educational program needs.

One school, Red Rock, has been completed and is in full operation, kindergarten through eighth grade, serving one hundred and ninety-two (192) students on a day basis.

Torreon Day School new construction was completed on January 15, 1983, and Dennehotoso improvement and repair is scheduled for final acceptance in May 1983. The Navajo Mountain School is under construction and is expected to be completed by the start of the 1983/1984 school year. Borrego Pass (contract) Day, Lukachukai Boarding, Red Lake Day, and Rocky Ridge Boarding schools will begin their building expansions this summer and are scheduled for completion around the start of the 1984/1985 school year. All four schools will then span kindergarten through eighth grade, enabling more intermediate and junior high school pupils to become day students.

The remaining six schools currently scheduled for building expansions are Canoncito Day, Chichiltah Boarding, Chilchinbeto Day, Cottonwood Day, Ojo Encino Day, and Pueblo Pintado Boarding. Of these six projects the construction contract for the Cottonwood Day School expansion and repair was awarded on April 22, 1983, and award of the construction contract for Chilchinbeto Day School expansion and repair is expected in May 1983. The design and engineering for the Ojo Encino Day School, Canoncito Day School and Pueblo Pintado Boarding School expansions and repairs is scheduled for completion by June 1983 with construction contract awards tentatively set for the second quarter of Fiscal year 1984. Chichiltah Boarding School design and engineering is scheduled for completion in June of 1984 with construction contract award by September 1984.

We will monitor each school expansion as it is completed, and the student population stabilizes, before initiating plans for other expansions and only then on an as needed basis.

For the present, based on the progress of the expansion program thus far, no specific school closures are planned. We do, however, anticipate the probability of some closures in the future as day school populations continue rising, which they have since 1978, and the present expansion permits an even sharper increase. But, these will be decided upon only after careful consideration and close consultation with the Tribe and school boards.

The immediate future appears to be one of an ever decreasing number of boarding students, hence fewer boarding schools. However, the special needs requiring some Navajo residential programs will not cease altogether. We expect to see significant alteration in the present configuration of the educational structure. OIEP and the School Facilities Staff, must plan cooperatively with the Tribe on how best to meet the needs of Navajo students in the coming years.

The communication and consultation process will need to be strengthened even further in the future, especially with local school boards, as decisions are being formulated with regard to consolidation and closures. So that we may effectively continue our consultation efforts with the Tribe on the proposed changes, we request that you identify those tribal entities which need to be involved. Upon receipt of this information a new consultation plan will be developed involving those entities identified.

I am certain that our mutual concern for the education of Navajo students will lend itself to the improvement of schools on the Navajo Reservation. Thank you for your assistance.

Sincerely,

Assistant Secretary - Indian Affairs

EXHIBIT 2

THE NAVAJO NATION
WINDOW ROCK NAVAJO NATION ARIZONA 86515

PETERSON ZAH
CHAIRMAN NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN NAVAJO TRIBAL COUNCIL

Mr. John W. Fritz
Deputy Assistant Secretary
for Indian Affairs
U.S. Department of Interior
Room 4160, 18th & C Streets, N.W.
Washington, D.C. 20240

SUBJECT: Proposed Closure and Consolidation of Schools or Dormitories at Toyei and Greasewood, Snowflake and Pinon

Dear Mr. Fritz:

I am writing to you at the request of Ms. Nancy Garrett, Deputy Director of the Office of Indian Education Programs. Ms. Garrett requested comments from the Navajo Nation regarding the proposed consolidation of the Toyei and Greasewood Boarding Schools, the closure of the Snowflake dormitory and the closure of the academic program at Pinon be sent directly to you by July 1 so that they may be considered in making your decision on these actions. A copy of that letter is attached for your reference.

The closure or consolidation of Bureau of Indian Affairs schools in the Navajo Nation affects a variety of communities throughout the Navajo Nation. The process is not an easy one particularly if it is accomplished in a way which respects the needs of the students and communities involved. I am sure you will agree that an effective process for accomplishing needed "adjustments" in any school system — closures, consolidations, expansions or program changes — requires planning and involvement at the local level as well as at the central governmental level.

With this in mind the Navajo Tribal Council adopted Navajo Education Policies which require local participation and approval from the Navajo Tribe before an educational program or facility may be closed or consolidated. In furtherance of this policy and the Navajo Nation's philosophy which promotes federal/tribal and local governmental relations, I have promoted joint planning for educational programs through a Joint Planning Team. The local representatives of this team have scheduled meetings for this summer.

Although I did not get your response to my letter of April 5, 1985, a copy of which is enclosed to you, I continue to look for your support of the joint planning process since it is so clearly consistent with the policy enunciated by President Ronald Reagan a year ago governing the relationship between Indian tribes and the federal government.

Based upon the foregoing, you can understand the alarming impact which the Office of Indian Education Programs has had on our communities and upon the tribal government when it unofficially announced in numerous ways and at numerous times that the previously mentioned schools were to be closed or consolidated at the end of the 1984-1985 school year.

The Navajo Tribe opposes OIEP's proposal to close or consolidate these schools without proper planning with the Tribe and with the communities.

Correspondence and telephone calls have been exchanged on this subject between the Navajo Tribal Government and the Bureau of Indian Affairs. Some formal and informal meetings have been held. As far as the tribe is concerned, these activities cannot be characterized as "consultation " within the meaning of P.L. 93-638, 95-561 or 98-511 because real dialogue has been lacking.

The Navajo Tribe does not advocate blanket opposition to closures and consolidations as a policy. We have previously supported the consolidations of the Chuska-Tohatchi and Jones Ranch-Chi Chil Tah Schools. We have received notification from the Eastern Agency School Board of other proposed consolidations and reorganizations, all either inititated at the local level or supported at the local level after extensive involvement. We are reviewing those proposals at this time, with the nature and degree of local involvement being a major consideration in the adoption of a Tribal position on these proposals. We have encouraged the dialogue between the BIA school at Kaibeto and the Page Public Schools.

We realize that serious issues have been raised about the programs at Toyei, Greasewood, Snowflake, and Pinon. The need for change, for economy, for marshalling of resources is real. We request an opportunity to participate with the BIA in addressing the need for change.

Based upon these considerations, the Navajo Tribe recommends the following:

1. Defer any final decision on the proposed closures and consolidations until you or representatives of the Office of Indian Education Programs with decision-making authority meet with Tribal representatives and representatives of the communities involved. Such a meeting could be hosted by the Joint Planning Team in an effort to resolve some of the unsettled questions about these proposals and to explore alternatives that meet everyone's concerns.

JUL [illegible]

2. In order to accommodate the orderly implementation of decisions which result from this process, operation of the four schools and dormitories involved should be continued under the same organization and goverance in the 1985/86 school year. In support of this recommendation, local and agency OIEP personnel should be authorized to begin planning for the coming school year.

3. Join with us in establishing criteria and procedures for future closures, consolidations, expansions, new starts and program changes so that we will have an interactive process already in place when these questions of "school adjustment" arise.

I am pleased you provided me the opportunity to advise you of the Navajo Nation's position on these matters.

I look forward to having the opportunity to discuss this matter further with you in the near future. I am enclosing a chronology of correspondence relating to this matter for your reference.

Sincerely,

Peterson Zah, Chairman
Navajo Tribal Council

Enclosures

xc: Claudeen Bates Arthur, Attorney General
  Department of Justice
 Mary Helen Creamer, Executive Director
  Navajo Division of Education
 Nancy Garrett, Deputy Director
  Office of Indian Education
 Dottie Hobson, Superintendent
  Chinle Agency
 Charles Johnson, Superintendent
  Fort Defiance Agency

CHRONOLOGY OF KEY EVENTS REGARDING CLOSURE AND CONSOLIDATION PROCESS

June 3, 1983	Ken Smith, Assistant Secretary of Interior for Indian Affairs writes to Peterson Zah, Chairman of the Navajo Tribal Council requesting Chairman to Identify tribal entities which should be involved in consultation process on proposed closure or consolidation of BIA schools (copy attached).
August 17, 1983	Chairman Peterson Zah writes to Ken Smith, Assistant Secretary of Interior for Indian Affairs outlining proposal for joint planning between Tribe and BIA for educational change (copy attached).
November 14, 1985	Nancy Garrett, Deputy Director, Office of Indian Education Programs appears before Navajo Tribal Council and calls for "joint consideration" of proposed school adjustments.
November 14, 1985	Navajo Tribal Council adopts Navajo Education Policies, including policy on procedures for closure or consolidation of educational programs. Council also adopts specific resolution on school closures and consolidations (see attached documents)
November 19, 1985	Nancy Garrett issues memorandum to Area Superintendent for Education at Fort Defiance Agency telling him to document all conversations and exchanges with Navajo Tribe as part of the "formal consultation process" with the Navajo Tribe (document attached).
November 27, 1985	Ernest Ingraham, Assistant Superintendent for Fort Defiance Agency writes letter to Mary Helen Creamer to "inform you" that consultation was beginning in regard to the Toyei-Greasewood consolidation and the Snowflake dormitory closure. The letter states that NDOE will be "kept aware" of the progress of events (copy attached).
January 28, 1985	Hearing held at Toyei and the proposed consolidation. Superintendent Johnson made it clear that he could not discuss or "debate" the proposal with those attending the hearing. He could only listen and pass on their remarks (copy of Mr. Johnson's remarks and first witness' statement attached).
February 9, 1985	Public Hearing held on proposed Snowflake dormitory closure. NDOE has not obtained a copy of this transcript.
March 1, 1985	Mary Helen Creamer, Executive Director of Navajo Division of Education appears at Interior Building in Washington, D.C. for scheduled meeting with

	Nancy Garrett, Deputy Director of OIEP. One of the intended items of discussion was proposed school closures. At the building front desk, Mrs. Creamer was informed that the staff person she had accompanying her from NDOE was unacceptable to Ms. Garrett. Ms. Garrett stated she would meet with Mrs. Creamer only if the staff person was left behind. The meeting did not take place.
March 6, 1985	Letter sent from Charles Johnson, Agency Education Superintendent for Fort Defiance Agency to Toyei School Principal telling him to take no action toward the enrollment of students for next year.
March 11, 1985	Education Committee of Navajo Tribal Council appoints first local members of Joint Planning Team, deciding to begin implementation of Chairman's Zah's proposal with or without formal response from BIA.
March 14, 1985	Toyei School Board passes resolution adopting position paper on proposed closure. Asks for opportunity to conduct enrollment drive and to explore alternative uses for facility if enrollment cannot be increased to acceptable level (copy attached).
March 19, 1985	Letter from Nancy Garrett to Tom Neeley, Superintendent of Cedar Public School District on plans to convert Pinon boarding school to dormitory (copy enclosed).
March 20, 1985	Mary Helen Creamer, Executive Director of Navajo Division of Education, writes to Nancy Garrett informing her of joint planning process, requesting BIA support and participation and requesting that question of the proposed closures and consolidations be submitted to the joint planning process (copy attached).
March 25, 1985	Hearing held on proposed closure of academic program at Pinon Boarding School.
March 26, 1985	David J. Tsosie, Chairman of the Education Committee of the Navajo Tribal Council writes to John Fritz, Deputy Assistant Secretary of Interior for Indian Affairs describing the appointment of the local members of the Joint Planning Team, asking for BIA support and participation in the process and requesting that the proposed closures and consolidations be submitted to that process.
March 29, 1985	Dr. Ken Ross, in letter to Rep. Eldon Rudd (R, Az) States that the Navajo Division of Educaton has

	presented plans for the alternative use of the facilities at Toyei. This statement is incorrect. (copy attached).
April 5, 1985	Chairman Peterson Zah writes a letter to John Fritz explaining Navajo tribal law on closures and consultation of schools and the Tribe's interpretation of the requirements of federal laws on the subject. The letter requests BIA participation in and support for the Joint Planning Team process and requests Mr. Fritz to defer decision on the proposed closures and consolidations so they can be reviewed through joint planning processes. (copy attached).
April 8, 1985	Ken Ross, Acting Director of Office of Indian Education programs, writes a letter to Peterson Zah stating that no decision has been made and stating that Charles Johnson and Dottie Hobson, the Agency Education Superintendents for Fort Defiance and Chinle Agencies have been directed to meet with the Chairman and with the Education Committee. Subsequent conversations with both Mr. Johnson and Mrs. Hobson revealed that they had received no such directive.
April 16-17, 1985	Nancy Garrett appears before the House Appropriations Subcommittee for Interior and Insular Affairs and states that BIA school closures are now being effectuated at Toyei, Pinon and Snowflake.
May 9, 1985	Navajo Tribal Council adopts a resolution confirming the establishment of the Joint Planning Team and inviting participation by the BIA in the joint planning process for Navajo schools (copy attached). A copy of the resolution was submitted to the BIA.
May 11, 1985	Mary Helen Creamer, Executive Director of the Navajo Division of Education met informally with Nancy Garrett at a BIA line officer's meeting in Phoenix. Ms. Garrett informed Mrs. Creamer that the decision on the closure or consolidation of the schools and dormitories under consideration had been finalized at the OIEP level. Ms. Garrett stated that the paperwork had been submitted to Mr. Fritz for final approval. The OIEP decision, according to Ms. Garrett was for the recommended closures and consolidations. Ms. Garrett noted that the Navajo Tribe might always choose to litigate the matter.

May 16, 1985	The Navajo Division of Education received a letter from Charles Johnson, Agency Education Superintendent for Fort Defiance Agency, dated May 10, and a letter from Dottie Hobson, Agency Educaton Superintendent for Chinle Agency, dated May 13, requesting her input and comments on the proposed closures and consolidations (copies attached).
May 17, 1985	The president of the Greasewood School Board sent a letter to John Fritz stating that it was too late in the year to have a smooth transition to a consolidation with Toyei by the next school year (copy attached).
May 23, 1985	Mary Helen Creamer responded to the letters from Charles Johnson and Dottie Hobson (copies are attached).
May 24, 1985	Tor Neeley, Superintendent of Cedar Public School District wrote letter to Nancy Garrett requesting that any cooperative agreement to have students from Pinon Boarding School attend Pinon Public School be deferred for a year because it was too late in the year to prepare for additional students or obtain the necessary cooperative agreements and because the classrooms at Pinon public school needed to accommodate the students are not yet constructed (copy attached).
May 24, 1985	Charles Johnson, Agency Education Superintendent for Fort Defiance Agency writes to the president of Steamboat Chapter reconfirming his prohibition of any activity to recruit students by staff of Toyei Boarding School (copy attached).
June 11, 1985	Charles Johnson responds to Mary Helen Creamer's letter of May 23 (copy attached).
June 18, 1985	Nancy Garrett writes to Mary Helen Creamer requesting response to proposed closures and consolidations from Chairman of Navajo Tribal Council to John Fritz (copy attached).

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

JUN 18 1985

RECEIVED
JUN 21 1985
Navajo Div. of Educ.
Exec. Director's Office

IN REPLY REFER TO

Indian Education
Code 501

Mrs. Mary Helen Creamer
Executive Director
Navajo Division of Education
P.O. Box N
Window Rock, Arizona 86515

Dear Mrs. Creamer:

Your May 23 letter to Mr. Charles Johnson, Fort Defiance Agency Superintendent for Education, states that you are working with the Chairman's Office and the Department of Justice on preparation of a response to Mr. Johnson's May 10 letter which outlines the issues which Mr. Fritz will consider before rendering a decision on Greasewood/Toyei and Snowflake. As you point out in your letter, timing for the decision is critical, particularly for Snowflake, if there is to be a change for the 85-86 school year. Mr. Johnson has written to you concerning an alternative proposal for Toyei which would minimize any disruption to their students. We would hope to have the tribe's comments by July 1 so that they may be considered by Mr. Fritz in making his decision. Send any comments directly to him.

I might alsb respond to your statement "I am uncertain as to what your purpose is in asking for my response." As I understand Navajo tribal policy, the Navajo Division of Education is, by tribal code, charged with the responsibility for coordinating planning efforts on such issues as school closures or consolidations. Quoting from the Navajo Education Policies, approved in October, 1984, "The Navajo Division of Education is the administrative agency within the Navajo Tribal Government with responsibility and authority for implementing and enforcing the educational laws of the Navajo Nation. The Division ...... functions comparable to the Departments of Education of the several states .... The Division ... is directed to negotiate cooperative arrangements .... with local, state, and federal agencies ....." Based on these words and other correspondence from the tribe, I believed it was appropriate to address correspondence to your office. Please advise me if this practice should be changed.

Sincerely,

Nancy C. Garrett

Deputy Director, Office of Indian
Education Programs

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
FORT DEFIANCE AGENCY
P.O. BOX 110
FORT DEFIANCE, ARIZONA 86504

IN REPLY REFER TO:

RECEIVED
JUN 17 1985

June 11, 1985

Mrs. Mary Helen Creamer, Director
Navajo Division of Education
Navajo Tribe
Box N
Window Rock, Arizona 86515

Dear Mrs. Creamer:

This is in response to your letter of May 23, 1985 regarding my request, dated May 10, 1985, for your response to the substantive issues raised with regard to the Bureau's proposal to consolidate the Toyei Boarding School with the Greasewood Boarding School and the Snowflake Dormitory with the Holbrook and Winslow Dormitories. I am disappointed that you did not respond to the substantive issues addressed in my letter.

My purpose in asking for your response is quite simple. As stated in my May 10 letter, I wanted to make you aware of the issues that the Deputy Assistant Secretary would consider in making his decisions on the school adjustments and to provide you with an opportunity to address those issues. From the very outset I have said that the decision on consolidation would not be made by me. The decision will be made by the Deputy Assistant Secretary for Indian Affairs. If you prefer, you may forward the tribe's comments to his office.

You referenced a letter from Ken Ross dated April 8, 1985, to Chairman Zah in which it was stated that a directive had been issued, to myself and Ms. Dottie Hobson, Chinle Agency Superintendent for Education, to meet with Chairman Zah and the Education Committee of the Navajo Tribal Council to discuss the proposed changes. While I have not received a copy of Ken Ross' letter, I am available at any time for such a meeting. Please advise me of a time convenient to you and Chairman Zah and Ms. Hobson and I will be present.

Since my May 10 letter, and in order to minimize any disruptions of services to the Toyei students, we are now proposing the consolidation of the Toyei School with Greasewood, still to be effective for the 1985-86 school year, but leaving the students and staff at Toyei for a transition year. The Toyei facility would be identified as a satellite to Greasewood throughout the 1985-86 school year, with administration and school board responsibilities and authorities under Greasewood. We would appreciate your comments to this approach.

You expressed concern over the statement that I am "handling" the details for representation of parents from the Toyei community on the consolidation School Board. My "handling" of the details is by law, regulation and past practice limited to providing technical assistance to the Greasewood School Board and the Toyei School Board in the same manner in which I "handled" the details of the Chuska/Tohatchi School Board consolidation. I have no part in the actual determination of how the representation will be decided. Again, my participation in the matter is limited to providing technical assistance when and if the decision is made to consolidate the schools.

If the decision is made to consolidate Toyei with Greasewood, there are Personnel procedures (RIF) which will be applied equally to the two schools (as was done at Chuska and Tohatchi last school year).

Your letter makes reference to P. L. 98-511. You may know that FY 1985 appropriations language for the Department of Interior places a moratorium on implementing that language, including the section on procedures to follow on school closures.

I am attaching for your information a summary of the California Achievement Test Scores for Indian students (seniors) residing in the Snowflake, Winslow and Holbrook Dormitories for school year 1983-84. These are actual grade equivalent scores of the Indian students. I believe they substantiate my statement that "The Holbrook and Winslow Public Schools provide the same level of education....as the Snowflake Public School."

I totally agree with your statement, that it is unnecessary that we continue to operate at cross purposes. My purpose is to provide the best possible educational opportunity for each and every Navajo student in our schools and dormitories.

Sincerely,

Charles E. Johnson

Superintendent for Education
Fort Defiance Agency

Attachment

Office of Indian Education Programs
BIA, Fort Defiance Agency

Dormitory - Indian Students

Seniors - 1983-84 California Achievement Test
Average Grade Equivalent Scores

Dormitory	No. of Seniors	Reading	Grammar	Mathematics
*Holbrook	61	8.8	9.4	9.9
Snowflake	17	8.1	7.6	9.1
Winslow	28	10.0	11.7	11.2
	106	9.0	9.6	10.1

*Includes Special Education students

Dormitory	No. of Seniors	Reading	Grammar	Mathematics
**Holbrook	51	9.4	10.2	10.4
Snowflake	17	8.1	7.6	9.1
Winslow	28	10.0	11.7	11.2
	96	9.2	9.8	10.2

**Excludes Special Education students

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Fort Defiance Agency
P. O. Box 110
Fort Defiance, Arizona 86504-0110

IN REPLY REFER TO:

Indian
Education
Code 6200

24 MAY 1985

Kee Williams, Chapter President
Steamboat Chapter
P. O. Box 990
Ganado, Arizona 86505-0990

Dear Mr. Williams:

This is in response to the Steamboat Chapter's Resolution of May 5, 1985 regarding my directive to the Toyei Boarding School staff prohibiting them from conducting enrollment activities for the 1985-86 School Year.

Your resolution requested that I reconsider my "prohibition on school staff for recruitment of students..." As I have explained on several occasions, it would not be appropriate, at this time, to conduct enrollment activities for the School Year 1985-86 since a final decision has not been made on the proposal to consolidate Toyei with the Greasewood Boarding School. Therefore, until I receive a final decision from the Deputy Assistant Secretary's Office, the prohibition on Toyei staff for recruitment of students will stand.

Your interest in and support of what is best "educationally" for the students is appreciated. Please feel free to come in and see me or call me at 602/729-5041, extension 256.

Sincerely,

Charles E. Johnson

Charles E. Johnson
Superintendent for Education

Cedar School District No. 25
Pinon School
Drawer 367
Keams Canyon, Arizona 86043
(602) 738-2334

RECEIVED
JUN 17 1985
AmB

May 24, 1985

MAY 30 3 44 PM '85

Ms. Nancy Garrett, Acting Assistant Director
Office of Indian Educational Programs
United States Department of Interior
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C. 20245

Dear Ms. Garrett:

Cedar Unified School District No. 25 seriously request your consideration on postponing the cooperative agreement between Cedar Unified School District No. 25 and BIA until the fall of 1986. The reasons for this request are as follows:

1) There is not adequate time to properly prepare to accomodate additional students at Pinon Public School. Construction of the 8 additional classrooms will not be completed until February or March.

2) Cedar Unified School District has repeatedly requested communication and cooperation from various offices of BIA concerning a cooperative agreement. This request goes back to 1983 with a position paper from the Governing Board.

3) Pinon Boarding School can house 150 students but they had a peak enrollment of over 200. Are the students who are not housed bus students?

4) The cooperative agreement should include a representative from Arizona State Department of Education, Navajo Division of Education, BIA contract officer and representative from Cedar Unified School District.

The primary aim of the Pinon Public School is to provide quality education by providing quality staff and quality facilities. Public schools, by law, are required to educate any student who comes through the doors whether there is room or not. With additional students next fall Pinon Public School would

Page Two
Ms. Garrett
May 24, 1985

literally overflow and the quality of education would suffer.

Again, Cedar Unified School District wants to go on record as saying we are willing to cooperate. But, we feel that we should have communication with BIA as their decisions affect budget, staff, and facilities of the Pinon Public School.

Sincerely,

Tom Neely

Tom Neely, Superintendent
Cedar Unified School District No. 25

TN/eh

cc: Dennis Fox
Mary Helen Creamer
Dottie Hobson
Bill Draper
Katie Stevens
File

Mrs. Dottie Hobson, Agency
 Superintendent for Education
Chinle Agency
Office of Indian Education Programs
P.O. Box 827
Chinle, Navajo Nation, Arizona 86503

SUBJECT: Response to Your Letter of May 13, 1985

Dear Mrs. Hobson:

Your letter dated May 13, 1985 was waiting for me when I returned to my office this week. According to our records, it arrived on May 16, at a time when I was away from Window Rock. I am taking this first opportunity to respond to you. Your letter requests my "reply and input" to the issues raised in converting Pinon Boarding School to a peripheral dormitory. You state that you want to inform parents, students and staff of the final decision in this matter at the close of this school year. Your letter concerns me for a number of reasons.

In the first place, I am uncertain as to what your purpose is in asking for my reply and input. Is it your intention to characterize my response as the final formal response of the Navajo Tribe to these proposals? If so, then such a response should incorporate input from the Education Committee, the Chairman of the Tribal Council and the Department of Justice. I am at this time working with the Chairman's Office and the Department of Justice on such a response and plan to meet with the Education Committee today to discuss your letter. Pending these discussions and the development of a formal response from the Navajo Tribe, however, I am responding directly to your letter to assure that you have a communication in hand by the end of school this week. I take this action because I fear that your request for my "reply and input" is, at least in part, an attempt to create the impression of efforts on the part of the Office of Indian Education Programs to consult with the Navajo Tribe on this issue. Since I do not believe that there has been a good faith effort on the part of the Office of Indian Education Programs to consult or communicate with the Navajo Tribe on this issue, I do not want my silence to create a false impression of acquiescence on the part of the Tribe.

Second, I must question whether a response to you on these issues can have any impact upon the outcome of the decision. Are you the person to whom I should be writing? In my meetings and conversations with you I have been left with the distinct impression that you have not been granted any discretionary authority in regard to this matter. You have not been authorized to negotiate, debate or in any way amend the position taken by the central office of the Office of Indian Education Programs. Am I correct in this impression or are you in a position to actually discuss and negotiate on the proposed program closure? If you are not the person who is making the decision on this matter, who is that person? I do not believe that it is consistent with the government-to-government relationship between the Navajo Tribe and the government of the United States for the Navajo Tribe to be limited to dealing with employees of the Office of Indian Education Programs, even supervisory employees, who lack the authority to negotiate and debate on the question of the appropriateness of the proposed program change. Aside from the basic issue of whether or not the proposed program closure is appropriate, there are a number of questions which need to be resolved about the proposed transfer of academic functions to Pinon public school. They cannot be resolved if the representative from OIEP is not in a position to negotiate solutions.

On April 8, 1985, Dr. Ken Ross, Director of the Office of Indian Education Programs wrote to Chairman Peterson Zah. The letter was in response, I believe, to my letter to Nancy Garrett dated March 20, 1985. I am enclosing a copy of my letter to Ms. Garrett and the letter from Dr. Ross with my response to you. In that letter, Dr. Ross represented that a directive had been issued to you to meet with Chairman Zah and with the Education Committee of the Navajo Tribal Council to discuss the proposed changes at Pinon. As of this date you have not met with the Chairman and with the Education Committee. I believe that the Navajo Tribe has a right to rely upon the representations made by the Director of the Office of Indian Education Programs regarding the procedures which OIEP will apply to the consideration of the proposed closure of the academic program at Pinon. Since these procedures have not yet been followed, I believe that it is premature to ask for my "reply and input" or the "reply and input" of the Navajo Tribe in regard to the proposed closure of the Pinon academic program.

On April 5, 1985 Chairman Peterson Zah wrote a letter to John Fritz, Deputy Assistant Secretary of Interior for Indian Affairs. I append a copy of that letter to my reply. In that letter, Chairman Zah stated:

> "Of foremost concern of the Navajo Tribe is the hasty manner in which OIEP is proceeding with the school consolidations within this school year.....P.L. 98-511, which was adopted by the last session of Congress, establishes procedures which must be followed and sets forth questions that must be answered before a BIA school can be closed or consolidated with another school. These include the involvement of tribes, local school boards, and parents from the earliest date of the consideration of such changes.....P.L. 98-511 requires a report to Congress on any proposed closure or consolidation in the academic year prior to the year when the closure or consolidation will take place.....This is another critically important reason why I believe that final action on the proposed closures and consolidations within this year is illegal and totally inappropriate."

I believe that this statement is clear and conveys the position of the chief executive of the Navajo Nation that a program closure or consolidation occurring in the same year in which the decision to close or consolidate is made cannot be supported. In ths regard, I would also draw your attention to the provisions of the Navajo Tribal Code, 10 NTC §§ 2 and 121 regarding the process by which program closures or consolidations are to be accomplished and to ask you to evaluate the dealings to date of the Bureau of Indian Affairs and its Office of Indian Education Programs with the Navajo Tribe and with the local boards and communities involved in light of those provisions.

In addition to the concerns as to authority and legality raised above, I do have serious questions about the wisdom of moving ahead at this time with the conversion of Pinon Boarding School to a peripheral dormitory. Both I and my staff have been in contact with the Superintendent of the Cedar Public School District in the past couple of days. Based upon these communications, I seriously question your assertion that Pinon public school has agreed to conduct classes in the Pinon Boarding School until the 8 additional classrooms are constructed at the public school. It is my understanding that no agreement whatsoever has been reached on this issue. Any agreement would have to involve not only the Board of the Cedar School District but the Arizona Department of Education. No agreement has been reached as to who would bear the liability for any accidents or injuries of students in the BIA facility being educated by the public school district. No agreement has been reached in regard to the transfer of record, transition of academic program, utilization of equipment and supplies. It is my understanding that nothing has yet been concluded in regard to the role of the current staff of Pinon Boarding School for next year. Pinon public school has not yet hired staff for these students and would be hard pressed at this point to acquire the materials, hire the staff or formulate the plans needed to absorb more than 200 students into the academic program of the school. Even if a decision is ultimately made to utilize the Pinon public school for the academic education of these children, such a decision cannot be rationally implemented over the course of this summer.

I am seriously concerned about the need to evaluate the program needs and support needs of the students in both schools and to assure that any decision about the future relationship of these two schools will be based upon such an evaluation. I am also concerned that a hasty change in the relationship between these schools will create unnecessary tensions in this community and make it more difficult to achieve concensus on the academic and boarding needs of the community. The information I have received indicates that Pinon public school is indeed preparing to build additional classrooms and that these classrooms should be completed some time in the coming year. I do not understand the rush to complete the process of decision-making and to achieve an actual closure of the academic portion of Pinon Boarding School according to such a hasty timetable. There is time for us to meet together and to work with the community on this issue.

In sum, I believe that there are a large number of issues that are unresolved at this time in regard to the plans to close the academic portion of the Pinon Boarding School and in regard to the relationship between the Pinon Boarding School and Pinon Public School. I also believe that a hasty process of transition will create a great deal of unnecessary hardship for the students and the communities involved. I believe that it is totally unnecessary for us to proceed in this rapid and apparently disorganized fashion. Our choice is not between hasty action or inaction. It is between precipitous, unilateral action or cooperative joint action. The Navajo Tribe is completely willing to work with the Office of Indian Education Programs and with the local boards and communities involved on evaluating this and other proposed school "adjustments" and on the needed adjustment of the entire BIA education system. Mechanisms to accomplish this have been proposed by the Navajo Tribe since August of 1983. I would urge you and those from whom you take direction to engage with us in such a process. I am convinced that we can make rapid and realistic progress on these and other issues if we work in concert. It is totally unnecessary that we continue to operate at cross purposes.

Sincerely,

Mary Helen Creamer, Executive Director
Navajo Division of Education

cc: Peterson Zah
Claudeen Bates Arthur
Roger Wilson
Donna Chavez
Ken Ross
Nancy Garrett
Tom Neeley

Mr. Charles Johnson, Agency
Superintendent for Education
Fort Defiance Agency
Office of Indian Education Programs
P.O. Box 110
Fort Defiance, Navajo Nation, Arizona 86515

SUBJECT: Response to Your Letter Dated May 10, 1985

Dear Mr. Johnson:

Your letter dated May 10, 1985 was waiting for me when I returned to my office this week. According to our records, it arrived on May 16, 1985, at a time when I was away from Window Rock. I am taking this first opportunity to respond to you. Your letter requests my "response to the issues raised with regard to the Bureau's proposal to consolidate the Toyei Boarding School with the Greasewood Boarding School and the Snowflake Dormitory with the Holbrook and Winslow Dormitories". You state that you want to "inform parents and students of what the final decision will be, in a timely manner. Your letter concerns me for a number of reasons.

In the first place, I am uncertain as to what your purpose is in asking for my response. Is it your intention to characterize my response as the final formal response of the Navajo Tribe to these proposals? If so, then such a response should incorporate input from the Education Committee, the Chairman of the Tribal Council and the Department of Justice. I am at this time working with the Chairman's Office and the Department of Justice on such a response and plan to meet with the Education Committee today to discuss your letter. Pending these discussions and the development of a formal response from the Navajo Tribe, however, I am responding directly to your letter to assure that you have a communication in hand by the end of school this week. I take this action because I fear that your request for my "response" is, at least in part, an attempt to create the impression of efforts on your part to consult with the Navajo Tribe on this issue. Since I do not believe that there has been a good faith effort on the part of the Office of Indian Education Programs to consult or communicate with the Navajo Tribe on this issue, I do not want my silence to create a false impression of acquiescence on the part of the Tribe.

Secondly, I must question whether a response to you on these issues can have any impact upon the outcome of the decision. Are you the person to whom I should be writing? At the hearing held January 28, 1985 at Toyei, you stated quite unequivocally that you would not and could not "debate" the question of the appropriateness of the Toyei and Greasewood consolidation. All that you could do, according to your statement there, was to pass the information on to the Office of Indian Education Programs in Washington. Is that still the situation or are you in a position to actually discuss and negotiate on the proposed consolidation? If you are not the person who is making the decision on these matters, who is that person?

I do not believe that it is consistent with the government-to-government relationship between the Navajo Tribe and the government of the United States for the Navajo Tribe to be limited to dealing with employees of the Office of Indian Education Programs who lack the authority to "debate" the question of the appropriateness of the proposed consolidation or closure. I am quite serious about this. Aside from the basic issue of whether or not to consolidate or close the programs, there are a number of questions that need to be resolved about the programs involved. These questions cannot be resolved if the representative from OIEP is not in a position to make decisions binding upon the Bureau.

On April 08, 1985, Ken Ross, Director of the Office of Indian Education Programs wrote to Chairman Peterson Zah. The letter was in response, I believe, to my letter to Nancy Garrett dated March 20, 1985. I am enclosing with my response to you a copy of my letter to Ms. Garrett and Dr. Ross' letter to Chairman Zah. In that letter, Dr. Ross represented that a directive has been issued to you to meet with Chairman Zah and with the Education Committee of the Navajo Tribal Council to discuss the proposed changes at Toyei and Greasewood and at Snowflake. As of this date you have not met with the Chairman nor with the Education Committee. I believe that the Navajo Tribe has a right to rely upon the representations made by the Director of the Office of Indian Education Programs regarding the procedures which OIEP will apply to the consideration of the proposed closures and consolidations. Since these procedures have not yet been followed, I believe that it is premature to ask for my response or the response of the Navajo Tribe to the proposed closure and consolidation.

On April 5, 1985, Chairman Peterson Zah wrote a letter to John Fritz, Deputy Assistant Secretary of Interior for Indian Affairs. I append a copy of that letter to my response. In that letter, Chairman Zah stated:

> "Of foremost concern to the Navajo Tribe is the hasty manner in which OIEP is proceeding with the school consolidations within this school year.....P.L. 98-511, which was adopted by the last session of Congress, establishes procedures which must be followed and sets forth questions that must be answered before a BIA school can be closed or consolidated with another school. These include involvement of tribes, local school boards and parents from the earliest date of the consideration of such changes.....P.L. 98-511 requires a report to Congress on any proposed closure or consolidation in the academic year prior to the year when the closure or consolidation will take place.....This is another critically important reason why I believe that final action on the proposed closures and consolidations within this year is illegal and totally inappropriate."

I believe that this statement is clear and conveys the position of the chief executive of the Navajo Nation that a program closure or consolidation occurring in the same year in which the decision to close or consolidate is made cannot be supported. In this regard, I would also draw your attention to the provisions of the Navajo Tribal Code, 10 NTC §§ 2 and 121 regarding the process by which program closures or consolidations are to be accomplished and to ask you to evaluate your dealings to date with the Navajo Tribe and with the local boards and communities involved in light of those provisions.

In addition to the concerns as to authority and legality raised above, I do have serious questions about the wisdom of moving ahead with the proposed closures and consolidations at this time. In regard to the consolidation of the Toyei and Greasewood programs, I have a number of concerns. It is my understanding that the renovations at the Greasewood facility have not been completed and will not be completed by the end of the summer. I seriously question the wisdom of undertaking any consolidation when the receiving facility is still in need of renovation of the magnitude that I understand is needed at Greasewood. In addition, I am extremely concerned by your statement that you are "handling" the details for representation of parents from the Toyei community on the Greasewood School Board. I do not believe that you have any right or authority whatsoever to "handle" this matter. Composition of school boards is an internal matter of the Navajo Nation. I had believed that the days when the Bureau of Indian Affairs "creates" tribal governmental institutions were long over. In this regard, I would refer you to 25 CFR §32.4(g)(2). The president of the Toyei school board was at the Division offices yesterday. At that time he represented to my staff that he has not been involved in "handling" the "detail for representation of parents from the Toyei community on the Greasewood School Board". Your representation that you are dealing with this matter is not only extremely inappropriate as a legal matter. It is also extremely unwise and will only exacerbate tensions and ill feelings within the communities involved.

Finally, I seriously question whether a program consolidation accomplished in the time between now and the next school year can be done without great confusion and without detriment to the children, parents and staff involved. There is only this summer. There is not the time to provide for the consolidation of programs or of staff. Your statement that Greasewood Boarding School will "hire" Toyei School staff "dependent upon the number of Toyei students that enroll at Greasewood" is inconsistent with the concept of consolidation. If this is a consolidation, any RIF should affect both schools. Administration should be consolidated according to some plan. Governing boards should indeed be consolidated, through the actions of the boards involved and the Navajo Tribal Government. Budgets should be consolidated. I do not believe that this can be done over the summer. Nor, from your letter, does it appear that you are even approaching the "consolidation" in a way which addresses these issues. I have received a copy of the letter which the President of the Greasewood School Board addressed to John Fritz regarding the consolidation. I attach a copy for your information. As you can see from this letter, the Greasewood School Board itself believes that the time is now too short to accomplish an orderly transition of program.

In regard to the closure or "consolidation" proposed for the Snowflake Dormitory, I must express again the concerns with the lack of an interactive consultation process, the failure to follow the procedures or even the timelines of P.L. 98-511, and the hastiness of the decision. Your letter speaks of the closure of the dormitory as a "consolidation" with Holbrook and Winslow dormitories. If this is a "consolidation" rather than a "closure", what plans if any have you developed to consolidate the budgets, staffs and administration of the three dormitories? Have you considered the impact on students who have already attended Snowflake High School through the sophomore or junior years? Have you made any provision so that these students may complete their education within the Snowflake school system? Do you even know if any of these students are involved in an educational program or course of study which they will not be able to continue at Holbrook or Winslow? You stated in your letter that the educational programs of the three districts are at "the same level". Have you reviewed the results of the California Achievement Test as administered in the three school districts? I have received a report from Arizona Department of Education regarding the California Achievement Test results for the 1983-84 year. These results show that seniors in the Snowflake School District achieved average grade equivalency of 12.8 in reading, 12.3 in grammer, and 12.9 in math. The figures for the Holbrook School District are 10.7, 11.3, and 10.0 respectively. The figures for Winslow School District are 11.0, 12.5, and 10.9 respectively. Do you really believe, given these figures, that education in the three school districts is "on the same level"?

In sum, I believe that there are a large number of issues that are unresolved at this time in regard to both proposed "consolidations". I also believe that a hasty process of transition will create a great deal of unnecessary hardship for the students and the communities involved. What is most frustrating is that it is unnecessary to proceed in this rapid and apparently disorganized fashion. Your choice is not between hasty action or inaction. It is between precipitous, unilateral action or cooperative joint action. The Navajo Tribe is completely willing to work with the Office of Indian Education Programs and with the local school boards and communities involved on evaluating these proposed school "adjustments" and on the needed adjustment of the entire BIA education system. Mechanisms to accomplish this have been proposed by the Navajo Tribe since August of 1983. I would urge you and those from whom you take your direction to engage with us in such a process. I am convinced that we can make rapid and realistic progress on these and other issues if we work in concert. It is totally unnecessary that we continue to operate at cross purposes.

Sincerely,

Mary Helen Creamer

Mary Helen Creamer, Executive Director
Navajo Division of Education

GREASEWOOD SCHOOL

Ganado, Arizona 86505
(602) 654-3331

RECEIVED
MAY 21 1985
NASBA

May 17, 1985

Mr. John Fritz
Department of Interior
Office of Indian Education Program
Washington, D.C. 20245

Dear Mr. Fritz;

On behalf of the Greasewood Board I want to alert you to several problems that have recently developed as a result of inaction from your office.

First of all the decision on the Greasewood and Toyei consolidation has been way too long in coming. Having no word we wait and wait, and now its too late to have a smooth transition for next year. We have no idea how many students we will have and so we can't plan for staff. The consolidation coupled with the new boundries is making it impossible to provide programs for Indian children in both Greasewood and Toyei. We have tried to cooperate.

Secondly, we have never gotten any word on the $245,000.00 paid as tuition money from Holbrook school. We still maintain that this money should be spent at Greasewood. What is your reasons for not doing so?

Finally, it is not through in action but through action that we have this new problem. The proposed regulations on the attendance of Non-Indian students Bureau schools have a very injurious provision in them. Do you really believe it is right to require a young child to ride a bus more than 30 to 40 minutes going to school? As a parent and a concerned educator, I'll tell you that I think it's criminal. The Greasewood board concurs with me on this matter.

I would appreciate your consideration of these matter

Sincerely,

Ronald Gishey,
School Board President

CC: Mr. C. Johnson, Supt. for Educ.
Mr. Dan Rosenfelt, Attorney
Mr. Jim Byrnes, Principal
Mr. V. Duccs, NASBA
Greasewood School Board
File

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Office of Indian Education Programs
Chinle Agency
P.O. Box 827
Chinle, Arizona 86503

IN REPLY REFER TO:

05-21-85
xc: Loreen Ferguson
Dept. of Justice

May 13, 1985

MAY 16 1985
Navajo Div. of Educ.
Director's Office

xc: Rosemary
Eddie B.
Rachel M. 5/21/85 lc

Mrs. Mary Helen Creamer, Director
Navajo Division of Education
The Navajo Tribe
P.O. Box N
Window Rock, Arizona 86515

Dear Mrs. Creamer:

This office requests your reply and input to those issues raised in converting Pinon Boarding School to a peripheral dormitory operation. The Bureau of Indian Affairs has not made a final decision at this time. There are several issues which have been raised and you are aware of these issues. We have had discussions on all these issues. As soon as school lets out this year, I would like to be able to inform parents, students and staff of what the final decision will be with regards to Pinon Boarding School so they can make plans for the next school year.

The issues on which we will need your comments are as follows:

1. At the time the Pinon community was seeking P.L. 81-815 construction funds for a new public school, the community agreed to convert the BIA Pinon Boarding School into a peripheral dormitory once a new public school was built. Pinon Public School is a brand new facility and was dedicated last year.

2. The U.S. Department of Education is to provide the Pinon Public School P.L. 81-815 construction funds for eight (8) additional classrooms to accommodate the students from the BIA Pinon Boarding School. These are not new P.L. 81-815 funds, but are funds that were saved from the original construction of the Pinon Public School. The construction of the additional classrooms is to begin on July 1, 1985, and is scheduled to be completed by February 1, 1986. The Pinon Public School has agreed to operate the academic program at the Pinon Boarding School until the additional classrooms are completed. The entire academic program at the Pinon Boarding School would then physically transfer to the new classrooms. There would be no interruption of academic services with this transfer.

3. It is not cost effective for the BIA to operate an academic program for the Boarding School when the Pinon Public School, located less than one mile away, operates a much larger program and offers additional extra-curricular activities that the Boarding School students could benefit from.

Please give this your immediate attention as I know you are most concerned about the future of Pinon Boarding School. Thanking you in advance for your cooperation and assistance.

Sincerely yours,

Dottie Hobson

Dottie F. Hobson
Agency Superintendent for Education

cc: Tom Neely, Supt., Cedar
Public School District
Nancy Garrett, Deputy Dir., OIEP
Dennis Fox, Assist. Dir., OIEP
Principal, Pinon Boarding School

Department of Interior
Bureau of Indian Affairs
Fort Defiance Agency
Office Indian Education Programs
P.O. Box 110
Fort Defiance, AZ 86504

MAY 16 1985
[illegible]

May 10, 1985

Mrs. Mary Helen Creamer, Director
Navajo Division of Education
Navajo Tribe
Box N
Window Rock, Arizona 86515

Dear Mrs. Creamer:

This is to request your response to the issues raised with regard to the Bureau's proposal to consolidate the Toyei Boarding School with the Greasewood Boarding School and the Snowflake Dormitory with the Holbrook and Winslow Dormitories. The Bureau has not made a final decision at this time. These issues, which we have discussed on several occasions in the past, are listed below.

Toyei/Greasewood

1. From 1970 to 1985, the Toyei enrollment has decreased from 674 to 169 students.

2. The proposed consolidation with the projected absorption of 169 Toyei students would bring Greasewood toward its capacity of 650. The students from Toyei that attend Greasewood would have the benefit of a much larger academic program and more extracurricular activities. Greasewood Boarding School is fully accredited and provides an equal level of education programs as Toyei.

3. The public school at Cedar is only 8 miles from Toyei. Also available is the public school at Ganado, approximately 27 miles from Toyei. Both of these public schools have the capacity to enroll the 40 day students at Toyei.

4. The facilities at Toyei are designed for 1,100 students and thus are 85 percent underutilized.

5. The continued operation at Toyei is not cost effective. Since our conversations, we have determined that with consolidation at Greasewood, annual operating costs for ISEP and Operation and Maintenance could be reduced by approximately $700,000 per year. Closure costs of $200,000 would offset some of the savings the first year.

6. Neither Toyei nor Greasewood Boarding Schools operates a clinic. The nearest hospital is in Ganado, which is 27 miles from Toyei and 29 miles from Greasewood.

7. The Fort Defiance Agency Superintendent for Education has consulted with the Tribe, school boards, community members, and school personnel through school board and chapter meetings. A public hearing was held by the Agency Superintendent on January 28, 1985, and was attended by 120 persons. The general tone of the meeting was in opposition to consolidation. There were 39 speakers at the hearing, 32 expressed opposition to consolidation.

8. Greasewood Boarding School has agreed to consider hiring Toyei School staff dependent upon the number of Toyei students that enroll at Greasewood.

9. The details for representation of parents from the Toyei community on the Greasewood School Board are being handled by the Agency Superintendent for Education. A waiver for the Toyei school board members to serve on the Greasewood School Board will be requested from the Navajo Tribe, similar to the arrangements made for Tohatchi School Board members to serve on the Chuska School Board (Tohatchi and Chuska Schools consolidated in FY 1985).

Snowflake

1. From 1975 to 1985, the enrollment at the Snowflake Dormitory has decreased from 118 to 56 students.

2. The facilities at Snowflake are designed for 128 students, thus the facilities are 56 percent underutilized.

3. The Holbrook and Winslow Public Schools provide the same level of education and extracurricular activities as the Snowflake Public School. Both public schools and dormitories can absorb the students from Snowflake. In addition, both Holbrook and Winslow Public Schools and Dormitories have expressed an interest in employing some of the Snowflake staff at their schools and dormitories. One Snowflake staff person has already been offered employment by the Holbrook Public School District.

4. The continued operation at Snowflake is not cost effective. Since our conversations, we have determined that with closure, ISEP costs in the amount of $117,140 and $70,318 of O&M costs will be saved each year. Closure costs will offset these cost savings in the first year.

5. The Fort Defiance Agency Superintendent for Education has consulted extensively with the Tribe, school boards, community members, students and school personnel. A public hearing was held by the Agency Superintendent on February 9, 1985, and was attended by 85 persons.

6. The Holbrook and Winslow Dormitories are only 25 and 47 miles respectively from Snowflake. The roads are all paved and in good condition. Therefore, the additional miles that parents will have to travel to see their children is minimal.

7. We first mentioned the possibility of closing Snowflake Dormitory in a letter to Chairman Zah dated August 30, 1984.

I would like to inform parents and students, of what the final decision will be, in a timely manner. Your written response before such decision is made is requested. Therefore, an expeditious response will be most appreciated.

Sincerely,

Charles E. Johnson

Charles E. Johnson
Fort Defiance, Agency Superintendent
for Education

CMY-45-85

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Confirming the Establishment of a Joint Planning Team of Bureau of Indian Affairs (BIA), School and Navajo Tribal Representatives to Address Proposed Changes in the BIA and Public School Systems and Other Educational Changes; Inviting the Participation of the BIA and Its Office of Indian Education Programs in this Process; Directing the Chairman of the Navajo Tribal Council, the Division of Education and the Department of Justice to Insure Navajo Nation Participation in All Major Decisions Affecting Navajo Education

WHEREAS:

1. The Navajo Tribal Council, through the adoption of education policies for the Navajo Nation, identified consultation and joint planning procedures and requirements for all education providers and applicable to major educational changes, such as closure or consolidation of schools and dormitories, 10 NTC Sections 2, 121, Resolution CN-62-84; and

2. The Navajo Nation recently expressed concern regarding Bureau of Indian Affairs' actions on the proposed closure or consolidation of certain BIA schools and dormitories in the Navajo Nation, which actions are inconsistent with and ignore the education laws and policies of the Navajo Nation and the requirements of Federal Indian education laws, as spelled out in P.L. 93-638, Sections 450(b), 450a(a) and 450a(b), P.L. 95-561, Section 1130, P.L. 98-511, Section 502e; and

3. The Education Committee of the Navajo Tribal Council, in implementation of a proposal from the Chairman of the Navajo Tribal Council to the Assistant Secretary of the Interior for Indian Affairs, appointed representatives to a Joint Planning Team for Navajo Education composed of the Chairman of the Education Committee, the Executive Director of the Navajo Division of Education, the Chairman of the Navajo Area School Board Association, the Director of the Association of Navajo Community Controlled School Boards, the Director of the Reservation-Wide Public School Association, a representative of the Chairman's Office and a representative of the Bureau of Indian Affairs Agency Education Superintendents, to join with representatives of the Office of Indian Education Programs and, where applicable, the School Facilities Staff to plan for changes in the publically-funded school systems serving the Navajo Nation (see letter from Peterson Zah to John Fritz, August 17, 1983; Minutes of Education Committee Meeting, March 11, 1985); and

4. The Executive Director of the Navajo Division of Education, in a letter dated March 20, 1985, requested the Deputy Director of the Office of

Indian Education Programs to defer immediate action on the closure of the Snowflake dormitory, the Consolidation of the Toyei and Greasewood Boarding Schools, and the elimination of the academic program at Pinon Boarding School, and to submit these and other decisions to the process of joint planning utilizing this Team; and

5. The Education Committee of the Navajo Tribal Council requested the Deputy Assistant Secretary of the Interior for Indian Affairs to halt further unilateral action on these closures and consolidations and, in a letter dated March 26, 1985, sought participation by the BIA in the Joint Planning Team process to address all proposed major changes in the BIA-funded education system; and

6. The Chairman of the Navajo Tribal Council, in a letter dated April 5, 1985, requested the Deputy Assistant Secretary of the Interior for Indian Affairs to submit proposed school closures and consolidations to the process of joint planning, through the Joint Planning Team established by the Education Committee, pursuant to the Chairman's letter of August 17, 1983; and

7. The requirements of Navajo Tribal law and the interests of all concerned can best be served through a process of cooperation and joint planning for the future development of the education systems within the Navajo Nation, in which all affected entities enjoy full and equal participation, as expressed in the Position Paper, appended hereto as Exhibit "A"; and

8. Despite repeated efforts by various entities within the Navajo Tribal Government to obtain the support of the Bureau of Indian Affairs for the establishment of a joint planning process, no formal commitment to this process has been made by the Bureau, yet the Bureau has unilaterally initiated actions to accomplish certain school closures and consolidations before the commencement of the 1985-86 school year.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby confirms the establishment of a Joint Planning Team for Navajo Education, as proposed by the Chairman of the Navajo Tribal Council and appointed by the Education Committee of the Navajo Tribal Council, to address issues of school closures and consolidation and any other major changes and developments within the school systems serving the Navajo Nation.

2. The Navajo Tribal Council further endorses and adopts the Position Paper of school closures and consolidations, appended hereto as Exhibit "A", as the official Tribal position.

3. The Navajo Tribal Council further directs the Chairman of the Navajo Tribal Council, the Navajo Division of Education and the Department of Justice to do all things necessary and proper to ensure the Navajo Nation's participation in any decisions regarding the closure or consolidation of BIA-funded schools or education programs, and to ensure that major decisions regarding the Bureau-funded education system will be made through a joint planning team process.

4. The Navajo Tribal Council requests the Bureau of Indian Affairs, and its Office of Indian Education Programs, to designate representatives to the Joint Planning Team and to begin the process of joint planning by the establishment of mutually-agreed-upon procedures and guidelines for the joint planning process.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 55 in favor and 0 opposed, this 6th day of May, 1985.

Chairman
Navajo Tribal Council

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Indian Education
Code 521

APR 8 1985

RECEIVED
[illegible] 15 1985
OFFICE OF THE

Mr. Peterson Zah
Chairman, Navajo Tribal Council
The Navajo Nation
Window Rock, Arizona 86515

Dear Mr. Zah:

Thank you for your letter of March 20, 1985, concerning the Toyei and Greasewood Boarding Schools; Snowflake Dormitory; and Pinon Boarding School.

The Bureau of Indian Affairs has not made a final decision concerning the educational institutions mentioned in your letter. We are currently reviewing the effects the proposed changes would have on the students, community, and tribe. As you are aware, the Bureau through its Fort Defiance and Chinle Agencies, has started its consultation efforts. The transcripts from these hearings have been forwarded to this office and are being reviewed. I want to assure you that the Bureau will seriously consider the educational opportunities available to all the affected students prior to making a final decision about any one of the three institutions.

We are aware of the Toyei School Board's opposition to the consolidation proposal. It should be noted that the Bureau decided to review this option only after a fifteen year decline in enrollment at Toyei. At the present time, the Toyei School's enrollment is 169; the school facility is designed for 1,100 students. The Agency Superintendent for Education, Mr. Charles Johnson, directed the Toyei staff not to recruit any new students for the 1984-1985 school year. This action was taken not only because of the uncertainty of the final decision regarding the consolidation proposal, but also because the school was funded for 188 students this year. Any sizeable increase in student population during this school year would result in a short fall of funds and staff.

The Snowflake Dormitory currently has a student population of sixty-two (62). We are reviewing the option of serving these students at other schools. We are very concerned that of the eighteen seniors this year at Snowflake Dormitory only five will graduate. Also of great concern is the fact that eight (8) seniors dropped-out of school this year. In our review, we have found that if the Snowflake Dormitory is closed, the public school would receive only twelve (12) students from the Snowflake Attendance Area. We are, however, continuing to review the public hearing transcripts and have not made any final recommendation.

A public hearing was held on March 25, 1985, concerning Pinon Boarding School. The Bureau decided to propose the conversion of the Pinon Boarding School into a peripheral dormitory due to the close proximity of the public school. We are aware of the limited enrollment capacity of the Pinon Public School and are reviewing this matter very closely. We have considered in our deliberations the possibility of entering into a cooperative agreement with the public school. In this arrangement, the Bureau would continue to operate the dormitory and the public school would operate the academic program. We are aware that this particular issue is very complex due primarily to the limited public school instructional facilities and the transportation of those children who do not live on the bus routes. This proposal will require a comprehensive review prior to making a final decision.

I have directed Mr. Charles Johnson and Ms. Dottie Holeson of the Fort Defiance and Chinle Agencies to meet with you and the Education Committee to discuss the proposed changes. As you know, the final recommendations regarding these proposals must be made in the near future to allow time for changes to be made in an orderly fashion. In the meantime, we will continue to review all the issues which have been raised by the parents, community and tribe.

We will keep you informed as this matter proceeds. Thank you for your letter.

Sincerely,

Dr. Kenneth G. Ross

Acting Director, Office of
Indian Education Programs

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN, NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

APR 5 1985

Mr. John W. Fritz
Deputy Assistant Secretary
  for Indian Affairs
U.S. Department of the Interior
Room 4160, 18th & C Streets, N.W.
Washington, D.C. 20240

SUBJECT: Proposed BIA School Closures and Consolidations

Dear Mr. Fritz:

As a follow-up to our discussions of March 26, 1985, I am writing to ask your assistance in establishing orderly and comprehensive procedures for the Navajo Nation and the Bureau of Indian Affairs to work jointly to plan for changes, modifications, expansions and consolidations in the Bureau-funded education system in the Navajo Nation. I write with a certain degree of urgency because BIA's office of Indian Education program is making decisions regarding the Navajo school system in a manner that precludes meaningful involvement by the Navajo schools, communities, and tribal agencies.

The problem of making orderly changes in the Bureau-funded education system is a real one. We realize that the system cannot remain static. As school populations shift and educational priorities change, it is necessary to undertake new activities, expand programs, consolidate and/or eliminate programs and facilities which no longer meet the needs of the system. We also recognize the reality that the Bureau school system, like any school system must operate as efficiently as possible within the financial constraints of its budget.

The Navajo Tribe becomes concerned when sudden changes occur in the system without, adequate planning and consultation to mitigate the educational, economic and social dislocation caused by such changes. Although these changes are conceived with the intent to improve the educational system, they have thus far created confusion and uncertainty among staff, students and parents and will also result in economic hardship to several Navajo communities.

It is precisely because of the Tribe's desire to avoid such calamities that the Navajo Tribal Council requested Ms. Nancy Garrett to appear before its November 14, 1984 meeting. At that time, the Council was assured that there was no "hit list" for Navajo schools and that the Navajo Tribe and the Bureau of Indian Affairs would give "joint consideration" to school "adjustments". The concept of "joint consideration" seemed consistent with my letter of August 17, 1983 to Ken Smith which called for a Joint Planning Team consisting of representatives from the Navajo Division of Education, local educational organizations, and the BIA.

I am aware that OIEP is implementing its plans with regard to three (3) facilities: 1) Closure of the peripheral dormitory at Snowflake; 2) consolidation of Toyei and Greasewood schools; and 3) closure of the academic program at Pinon Boarding School. To date OIEP's decisionmaking has not involved the kind of cooperation and joint planning which I discussed in my August 17, 1983 letter and for which Ms. Garrett made commitments in her remarks to the Navajo Tribal Council in November, 1984.

It is with great concern that I question the present decisionmaking process in regards to these schools since it will create unnecessary academic, social and economic turmoil that could be mitigated if a more careful process were followed. For example, the Toyei facility is relatively new and in very good shape. It has just had an attendance boundary established for it by OIEP which will very likely result in an increase in student population. The school is situated in an Agency in which there is no BIA high school, and in an area with a great need for a vocational/technical facility. It serves as the major employer and social center of the community. It is simply wasteful to close down the facility without analyzing the possibility of increasing enrollment, possibilities for alternative use, and plans to offset the economic and social dislocation to the Toyei community. Another example is the closure of Pinon Boarding School which is also troublesome since it does not appear that the Pinon Public School currently has permanent facilities sufficient to absorb the increase in student body. There are undoubtedly other impacts of these proposed program changes which will come to light, and which can be resolved in a more careful and systematic manner.

Of foremost concern to the Navajo Tribe is the hasty manner in which OIEP is proceeding with school consolidations within this school year which will lead to more problems and undermine alternatives that are now available in connection with these activities. P.L. 98-511, which was adopted by the last session of Congress, establishes procedures which must be followed and sets forth questions that must be answered before a BIA school can be closed or consolidated with another school. These include the involvement of tribes, local school boards, and parents from the earliest date of the consideration of such changes. They also include assessment of the educational and social needs of the students, and identification of available alternatives. P.L. 98-511 requires a report to Congress on any proposed closure or consolidation in the academic year prior to the year when the closure or consolidation will take place (Sec.502(g)).

APR 5 1985

It is our position that this law is fully in effect and applies to the proposed closures and consolidations now being forced upon us by OIEP. Congressional action to defer FY 1985 funding of Title V of P.L. 98-511 did not amend, repeal or render ineffective the provisions of Sec.502(g) which prohibits the closure or consolidation of any school except in accordance with the aforementioned provisions. This is another critically important reason why I believe that final actions on the proposed closures and consolidations within this year is illegal and totally inappropriate. In this same regard, I feel compelled to remind you that as our trustee, OIEP can and will be held to the highest fiduciary standards. P.L. 98-511 merely sets forth some minimal standards against which the courts will measure the fiduciary duty.

It has been nearly a year and a half since I called for joint planning between the BIA and the Navajo Nation. Although I have received no formal response, I have interpreted subsequent statements by OIEP staff and yourself as agreeing in principle to a joint planning process. The members of the Joint Planning Team from the Navajo Nation have now been appointed and they include: 1) David J. Tsosie, Chairman of the Education Committee of the Navajo Tribal Council; 2) Mary Helen Creamer, Executive Director of the Navajo Division of Education; 3) Ray Morgan, Chairman of the Navajo Area School Board Association; 4) Benjamin Barney, Director of the Association of Navajo Community Controlled School Boards; 5) Patrick Graham, Director of the Reservation-Wide Public School Association; 6) a representative of my office; and 7) a representative of the BIA Agency Education Superintendents. Additional members may serve from time to time when an issue involves a particular jurisdiction or a particular specialty.

In order to allow the joint planning team to accomplish its task, I am requesting a meeting with you to discuss the process of developing reasonable and workable plans for the school system. In the meantime, I request you to defer the following decisions: 1) the closure of Snowflake Dormitory; 2) consolidation of Toyei and Greasewood schools; and 3) closure of the academic program at Pinon boarding school. This will give us time to work with the BIA to find the most sensible approaches to these proposed changes. In accordance with present law the Navajo Tribe is asserting its rights to provide joint input on the BIA School Adjustment Plans so that sound educational, social and economic planning can take place prior to implementing these changes.

In closing, I must reemphasize our educational and economic needs which are intricately linked under the BIA's federal boarding school policy and plan. Our students need better educational programs. They need opportunities for vocational training. They need more and better high school opportunities. They need to be educated in facilities that are adequate and not in temporary structures. The Navajo people

Letter to John Fritz
Page 4

APR - 5 198[illegible]

need economic development centers throughout the Navajo Nation. We need to maximize community involvement in the schools and to generate local economic activity. I am convinced that we can approach the question of how to best make these changes in the Bureau school system in a way which addresses many of these problems. I believe we can make decisions for the system that are a benefit to all the communities involved. It is my hope that you will agree with me that it is worth the effort to approach the problems of the BIA education system in a comprehensive, practical manner.

I would appreciate your most immediate response to the concerns expressed in this letter.

Sincerely,

Peter Zah

Peterson Zah, Chairman

Attachments